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FROM

Library of the late
Col. Henry Lee

13 March, 1899

MILITIA LAWS

OF THE

UNITED STATES

AND OF THE

Commonwealth of Massachusetts,

TOGETHER

WITH EXTRACTS

FROM THE

UNITED STATES AND STATE CONSTITUTIONS,

IN RELATION THERETO.

COMPILED AND PUBLISHED FOR THE USE OF THE MILITIA,
IN CONFORMITY TO A RESOLVE OF THE LEGISLATURE,
BY HENRY A. S. DEARBORN,
Adjutant General of Massachusetts.

Boston:
DUTTON AND WENTWORTH, STATE PRINTERS.
.....
1840.

~~HE . 8722~~
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Commonwealth of Massachusetts.

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RESOLVE

CONCERNING THE LAWS RELATING TO THE MILITIA.

Resolved, That the Adjutant General be, and he is hereby required, to prepare and cause to be printed in a convenient form, a digest of the existing laws of the Commonwealth, in relation to the Militia, and to forward copies of the same to all the Commissioned Officers of the Militia of this Commonwealth, and to the Assessors and Town Clerk of each Town.

HOUSE OF REPRESENTATIVES, March 24, 1840.

Passed.

ROBERT C. WINTHROP, *Speaker.*

IN SENATE, March 24, 1840.

Passed.

DANIEL P. KING, *President.*

March 24, 1840.—Approved.

MARCUS MORTON.

EXTRACTS

FROM THE

CONSTITUTION OF MASSACHUSETTS,

WHICH WENT INTO OPERATION OCT. 25, 1780.

DECLARATION OF RIGHTS.

ART. 1. All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness.

The people have a right to enjoy and defend life, &c.

ART. 4. The people of this Commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign and independent State; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction and right, which is not, or may not hereafter be, by them expressly delegated to the United States of America in Congress assembled.

To exercise every power as a sovereign State which is not delegated to the U. S.

ART. 10. Each individual of the society has a right to be protected by it, in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary.

Each individual's right to protection, &c.

ART. 17. The people have a right to keep and to bear arms for the common defence. And as in time of peace armies are dangerous to liberty, they ought not to be maintained without the consent of the Legislature; and the military power shall always be held in exact subordination to the civil authority, and be governed by it.

Right to keep arms.

Military subordinate to civil power.

ART. 27. In time of peace no Soldier ought to be quartered in any house without the consent of the owner; and in time of war such quarters ought not to be made but by the civil magistrate in a manner ordained by the Legislature.

Troops not to be quartered in any house, &c.

Militia in actual service subject to law martial.

ART. 28. No person can in any case be subjected to law martial, or to any penalties or pains, by virtue of that law, except those employed in the army and navy, and except the militia in actual service, but by authority of the Legislature.

THE FRAME OF GOVERNMENT.

CHAPTER 1.—*The Legislative Power.*

SECTION I.—*The General Court.*

Gen. Court has power to make laws for the support, &c.

ART. 4. "And further, full power and uthority are hereby given and granted to the said General Court, from time to time, to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this Constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof; "and to set forth the several duties, powers and limits, of the several civil and military officers of this Commonwealth, and the forms of such oaths or affirmations as shall be respectively administered unto them for the execution of their several offices and places, so as the same be not repugnant or contrary to this Constitution."

To set forth the powers of civil and military officers, form of oaths, &c. Amend. Art. 6, page 7.

CHAPTER II.—*Executive Power.*

SECTION I.—*Governor.*

The Governor to be Commander in Chief

Power as such.

ART. 7. The Governor of this Commonwealth for the time being, shall be the commander in chief of the army and navy, and of all the military forces of the State, by sea and land; and shall have full power, by himself, or by any commander, or other officer or officers, from time to time, to train, instruct, exercise and govern the militia and navy; and, for the special defence and safety of the Commonwealth, to assemble in martial array, and put in warlike posture, the inhabitants thereof, and to lead and conduct them, and with them to encounter, repel, resist, expel, and pursue, by

force of arms, as well by sea as by land, within or without, the limits of this Commonwealth, and also to kill, slay and destroy, if necessary, and conquer by all fitting ways, enterprises and means whatsoever, all and every such person and persons as shall, at any time hereafter, in a hostile manner, attempt or enterprise the destruction, invasion, detriment, or annoyance of this Commonwealth; and to use and exercise, over the army and navy, and over the militia in actual service, the law martial, in time of war or invasion, and also in time of rebellion declared by the Legislature to exist, as occasion shall necessarily require; and to take and surprise by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition and other goods, as shall, in a hostile manner, invade, or attempt the invading, conquering, or annoying this Commonwealth; and that the Governor be entrusted with all these and other powers, incident to the offices of captain general and commander in chief, and admiral, to be exercised agreeably to the rules and regulations of the Constitution, and the laws of the land, and not otherwise.

Incidental power as Captain General and Admiral.

Provided, That the said Governor shall not, at any time hereafter, by virtue of any power by this Constitution granted, or hereafter to be granted to him by the Legislature, transport any of the inhabitants of this Commonwealth, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the General Court; except so far as may be necessary to march or transport them by land or water for the defence of such part of the State, to which they cannot otherwise conveniently have access.

Shall not march or transport inhabitants out of the State.

ART. 10. The captains and subalterns of the militia, shall be elected by the written votes of the train band and alarm list of their respective companies, of *twenty-one years of age and upwards*;* the field officers of regiments, shall be elected by the written votes of the captains and subalterns of their respective regiments; the brigadiers shall be elected in like manner, by the field officers of their respective brigades: And such officers, so elected, shall be commissioned by the Governor, who shall determine their rank.

Officers, by whom elected, &c.

*Amend Art. 5, page 7.

The Legislature shall, by standing laws, direct the time and manner of convening the electors, and of collecting the votes, and of certifying to the Governor the officers elected.

Legislative power respecting elections.

Major General's, how appointed.

The major generals shall be appointed by the Senate and House of Representatives, each having a negative upon the other; and be commissioned by the Governor.

If electors neglect to choose, Governor to appoint officers.

And if the electors of brigadiers, field officers, captains or subalterns, shall neglect or refuse to make such elections, after being duly notified, according to the laws for the time being, then the Governor, with advice of Council, shall appoint suitable persons to fill such offices.

Officers may be removed by address, &c.

And no officer, duly commissioned to command in the militia, shall be removed from his office, but by the address of both Houses to the Governor, or by fair trial in court martial, pursuant to the laws of the Commonwealth, for the time being.†

†Amend. Art. 4, page 7.

Staff officers, how appointed.

The commanding officers of regiments shall appoint their adjutants and quarter masters; the brigadiers their brigade majors; and the major generals their aids; and the Governor shall appoint the Adjutant General.

Governor to appoint officers of forts, &c.

The Governor, with advice of Council, shall appoint all officers of the continental army, whom by the confederation of the United States, it is provided that this Commonwealth shall appoint,—as also all officers of forts and garrisons.

Present organization of the militia to remain until altered by law.

The divisions of the militia into brigades, regiments and companies, made in pursuance of the militia laws now in force, shall be considered as the proper divisions of the militia of this Commonwealth, until the same shall be altered in pursuance of some future law.

All public boards, Commissary General, &c. to make returns, &c.

ART. 12. All public boards, the Commissary General, all superintending officers of public magazines and stores, belonging to this Commonwealth, and all commanding officers of forts and garrisons within the same, shall, once in every three months, officially, and without requisition, and at other times, when required by the Governor, deliver to him an account of all goods, stores, provisions, ammunition, cannon with their appendages, and small arms with their accoutrements, and of all other public property whatever under their care respectively; distinguishing the quantity, number, quality and kind of each, as particularly as may be; together with the condition of such forts and garrisons: And the said commanding officer shall exhibit to the Governor, when required by him, true and exact plans of such forts, and of the land and sea, or harbor or harbors adjacent.

And the said boards, and all public officers, shall communicate to the Governor, as soon as may be after

receiving the same, all letters, despatches, and intelligences of a public nature, which shall be directed to them respectively.

CHAPTER VI.

ART. 4. All commissions shall be in the name of the Commonwealth of Massachusetts, signed by the Governor, and attested by the Secretary, or his deputy, and have the great seal of the Commonwealth affixed thereto. Commissions to be under seal, &c.

AMENDMENTS,

WHICH WENT INTO OPERATION, MAY 31, 1821.

ART. 4. Whenever the exigencies of the Commonwealth shall require the appointment of a Commissary General, he shall be nominated, appointed and commissioned, in such manner as the Legislature may, by law, prescribe. Com. Gen. how appointed.

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ART. 6. Instead of the oath of allegiance prescribed by the Constitution, the following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military, under the government of this Commonwealth, before he shall enter on the duties of his office, to wit: Oath of allegiance.

"I, A. B. do solemnly swear, that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the Constitution thereof. So help me God." Form of oath.

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force of arms, as well by sea as by land, within or without, the limits of this Commonwealth, and also to kill, slay and destroy, if necessary, and conquer by all fitting ways, enterprises and means whatsoever, all and every such person and persons as shall, at any time hereafter, in a hostile manner, attempt or enterprise the destruction, invasion, detriment, or annoyance of this Commonwealth; and to use and exercise, over the army and navy, and over the militia in actual service, the law martial, in time of war or invasion, and also in time of rebellion declared by the Legislature to exist, as occasion shall necessarily require; and to take and surprise by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition and other goods, as shall, in a hostile manner, invade, or attempt the invading, conquering, or annoying this Commonwealth; and that the Governor be entrusted with all these and other powers, incident to the offices of captain general and commander in chief, and admiral, to be exercised agreeably to the rules and regulations of the Constitution, and the laws of the land, and not otherwise.

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All public boards, Commissary General, &c. to make returns, &c.

ART. 12. All public boards, the Commissary General, all superintending officers of public magazines and stores, belonging to this Commonwealth, and all commanding officers of forts and garrisons within the same, shall, once in every three months, officially, and without requisition, and at other times, when required by the Governor, deliver to him an account of all goods, stores, provisions, ammunition, cannon with their appendages, and small arms with their accoutrements, and of all other public property whatever under their care respectively; distinguishing the quantity, number, quality and kind of each, as particularly as may be; together with the condition of such forts and garrisons: And the said commanding officer shall exhibit to the Governor, when required by him, true and exact plans of such forts, and of the land and sea, or harbor or harbors adjacent.

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WHICH WENT INTO OPERATION, MAY 31, 1821.

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ART. 6. Instead of the oath of allegiance prescribed by the Constitution, the following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military, under the government of this Commonwealth, before he shall enter on the duties of his office, to wit: Oath of allegiance.

"I, A. B. do solemnly swear, that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the Constitution thereof. So help me God." Form of oath.

EXTRACTS

FROM THE

CONSTITUTION OF THE UNITED STATES,

WHICH WENT INTO OPERATION MARCH 4, 1789.

ARTICLE I.

Powers of Congress.

SEC. 8. The Congress shall have power——"To make rules for the government and regulation of the land and naval forces":—"To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions":—"To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress."

Restrictions upon States.

SEC. 10. "No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."

ARTICLE II.

President to be Commander in Chief.

SEC. 2. The President shall be Commander in Chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States.

AMENDMENTS.

Right to keep arms.

ART. 2. A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

Soldiers not to be quartered in private houses.

ART. 3. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

Powers reserved to the States.

ART. 10. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

UNITED STATES LAWS.

AN ACT more effectually to provide for the National Defence, by establishing an Uniform Militia throughout the United States. [May 8, 1792.]

SEC. 1. *BE it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That each and every free able bodied white male citizen of the respective States, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five years, (except as is hereinafter excepted) shall severally and respectively be enrolled in the militia by the captain or commanding officer of the company, within whose bounds such citizen shall reside, and that within twelve months after the passing of this act. And it shall at all times hereafter be the duty of every such captain or commanding officer of a company to enrol every such citizen, as aforesaid, and also those who shall, from time to time, arrive at the age of eighteen years, or being of the age of eighteen years and under the age of forty-five years (except as before excepted) shall come to reside within his bounds; and shall, without delay, notify such citizen of the said enrolment, by a proper non-commissioned officer of the company, by whom such notice may be proved. That every citizen so enrolled shall, from and after he shall be duly notified of his enrolment be constantly provided with a good musket or firelock, a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch with a box therein to contain not less than twenty-four cartridges, suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball: or with a good rifle, knapsack, shot pouch and powder horn, twenty balls suited to the bore of his rifle, and a quarter of a pound of powder; and shall appear, so armed, accoutred and provided, when called out to exercise, or into service, except, that when called out on company days to exercise only, he may appear without a knapsack. And any notice or warning to the citizen, so enrolled, to attend a company, battalion or regimental muster or training, which shall be according to the laws of the State in which it is given for that purpose, shall be deemed a legal notice of his enrolment. That the commissioned officers shall severally be armed, with a sword or hanger, and

Every citizen to be enrolled, except.

Privates, how to be armed and equipped. Act of March 2, 1803, § 2.

Act of March 2, 1803, § 2.

Officers, how to be armed.

espontoon; and that from and after five years from the passing of this act, all muskets for arming the militia as herein required, shall be of bores sufficient for balls of the eighteenth part of a pound. And every citizen so enrolled and providing himself with the arms, ammunition and accoutrements required, as aforesaid, shall hold the same exempted from all suits, distresses, executions or sales, for debt or for the payment of taxes.

Arms exempted from attachment.

Exempts.

SEC. 2. *And be it further enacted*, That the Vice President of the United States; the officers, judicial and executive of the government of the United States; the members of both Houses of Congress, and their respective officers; all custom-house officers with their clerks; all post officers, and stage-drivers, who are employed in the care and conveyance of the mail of the post office of the United States, all ferrymen, employed at any ferry on the post road; all inspectors of exports; all pilots; all mariners, actually employed in the sea service of any citizen or merchant within the United States; and all persons who now are, or may hereafter be exempted by the laws of the respective States, shall be, and are hereby exempted from militia duty, notwithstanding their being above the age of eighteen and under the age of forty-five years.

Arrangement of the militia into divisions, &c.

SEC. 3. *And be it further enacted*, That within one year after the passing of this act, the militia of the respective States shall be arranged into divisions, brigades, regiments, battalions* and companies, as the legislature of each State shall direct; and each division, brigade and regiment, shall be numbered at the formation thereof, and a record made of such members in the adjutant general's office in the State; and when in the field, or in service in the State, each division, brigade and regiment shall, respectively, take rank according to their numbers, reckoning the first or lowest number highest in rank. That if the same be convenient, each brigade shall consist of four regiments; each regiment of two battalions; each battalion of five companies; each company of sixty-four privates. That the said Militia shall be officered by the respective States, as follows: To each division, one major general and two aids de camp, with the rank of major: one division inspector, with the rank of lieu-

How officered.

* By the Rules and Regulations for the field exercise of the militia now established, each regiment forms one battalion for manœuvering.

tenant colonel, and one division quarter master, with the rank of major; one brigadier general; one aid de camp with the rank of captain; one brigade inspector, to serve also as brigade major, with the rank of a major; and one quarter master, with the rank of captain; to each regiment, consisting of two battalions, one colonel, one lieutenant colonel, one major and one chaplain. Where there shall be one battalion, it shall be commanded by a major; to each company one captain, one lieutenant, one ensign, four sergeants, four corporals, one drummer and one fifer or bugler. That there shall be a regimental staff, to consist of one adjutant and one quarter master, to rank as lieutenants; one pay master, one surgeon, and one sugeon's mate; one sergeant-major; one drum-major, and one fife-major.

Act of April 18, 1814.

Acts of March 2, 1803 and April 20, 1816.

SEC. 4. *And be it further enacted*, That out of the militia enrolled, as is herein directed, there shall be formed for each battalion at least one company of grenadiers, light infantry or riflemen; and that to each division, there shall be at least one company of artillery, and one troop of horse. There shall be to each company of artillery, one captain, two lieutenants, four sergeants, four corporals, six gunners, six bombardiers, one drummer and one fifer; the officers to be armed with a sword or hanger, *a fusee, bayonet and belt, with a cartridge box to contain twelve cartridges*;* and each private or matross shall furnish himself with all the equipments of a private in the infantry, until proper ordinance and field artillery is provided. There shall be to each troop of horse, one captain, two lieutenants, one cornet, four sergeants, four corporals, one saddler, one farrier, and one trumpeter; the commissioned officers to furnish themselves with good horses, of at least fourteen hands and an half high, and to be armed with a sword and pair of pistols, the holsters of which to be covered with bearskin caps. Each dragoon to furnish himself with a serviceable horse, at least fourteen hands and an half high, a good saddle, bridle, mailpillion and valise, holsters and a breastplate and crupper, a pair of boots and spurs, a pair of pistols, a sabre, and a cartouch box, to contain twelve cartridges for pistols. That each company of artillery and troop of horse shall be formed of volunteers from the brigade, at the discretion of the commander in chief of the State, not exceeding one company of each to a

What proportion shall be grenadiers, &c.

Artillery, how officered and armed.

Troops of horse.

Art. and Cav. not to exceed one company to a regiment. &c.

* These articles not required by the Returns of the U. S. prescribed according to Act, March 2, 1803.

regiment, nor more in number than one eleventh part of the infantry, and shall be uniformly clothed in regimentals, to be furnished at their own expense; *the color and fashion to be determined by the brigadier commanding the brigade to which they belong.**

To be uniformly clothed.

Field officers to provide colors, company officers to provide, drums, &c.

SEC. 5. *And be it further enacted*, That each battalion and regiment shall be provided with the State and regimental colors *by the field officers*, and each company with a drum and fife or bugle horn, *by the commissioned officers of the company*, in such manner as the Legislature of the respective States shall direct.

Adjutant general, his duty.

SEC. 6. *And be it further enacted*, That there shall be an adjutant general appointed in each State, whose duty it shall be to distribute all orders from the commander in chief of the State to the several corps; to attend all public reviews when the commander in chief of the State shall review the militia, or any part thereof; to obey all orders from him relative to carrying into execution and perfecting the system of military discipline established by this act; to furnish blank forms of different returns that may be required, and to explain the principles on which they should be made; to receive from the several officers of the different corps throughout the State, returns of the militia under their command, reporting the actual situation of their arms, accoutrements and ammunition, their delinquencies and every other thing which relates to the general advancement of good order and discipline: All which the several officers of the divisions, brigades, regiments and battalions, are hereby required to make in the usual manner, so that the said adjutant general may be duly furnished therewith: from all which returns, he shall make proper abstracts, and lay the same annually before the commander in chief of the State.

To furnish blanks.

Returns to be made to him.

Franking privilege. Act of March 3, 1825, § 40.

The adjutant general of the militia of each State and territory shall have right *to receive, by mail, free of postage, from any major general, or brigadier general thereof, and to transmit to said generals*, any letter or packet, relating solely to the militia of such State or territory: *provided, always*, that every such officer, before he delivers any such letter or package for transmission, *shall in his own proper hand writing, on the outside thereof, endorse the nature of the papers enclosed, and thereto subscribe his name and office*, and shall

* By the constitution of the U. S. as Congress has power only, to provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States—the regulation of its *uniform* is among the reserved powers of the States.

previously furnish the postmaster of the office where he shall deposite the same, with a specimen of his signature.*

There shall be, to the militia of each State, one quarter master general. Act of March 2, 1803, § 3.

SEC. 7. *And be it further enacted*, That the system of discipline and field exercise which is and shall be ordered to be observed by the regular army of the United States, in the different corps of infantry, artillery, and riflemen, shall also be observed by the militia, in the exercises and discipline of the said corps, respectively, throughout the United States. System of discipline. Act of May 12, 1820, § 1.

SEC. 8. *And be it further enacted*, That all commissioned officers shall take rank according to the date of their commissions; and when two of the same grade bear an equal date, then their rank to be determined by lot, to be drawn by them, before the commanding officer of the brigade, regiment, battalion, company or detachment. Rank of officers—Mass. law. Mar 6, 1810, § 12.

SEC. 9. *And be it further enacted*, That if any person whether officer or soldier, belonging to the militia of any State, and called out into the service of the United States, be wounded or disabled, while in actual service, he shall be taken care of and provided for at the public expense. Officers and soldiers, disabled in service, &c.

SEC. 10. *And be it further enacted*, That it shall be the duty of the brigade inspector, to attend the regimental and battalion meetings of the militia composing their several brigades, during the time of their being under arms, to inspect their arms, ammunition and accoutrements; superintend their exercise and manœuvres, and introduce the system of military discipline (before described) throughout the brigade, agreeably to law, and such orders as they shall, from time to time, receive from the commander in chief of the State; to make returns to the adjutant general of the State, at least once in every year, of the militia of the brigade to which he belongs, reporting therein the actual situation of the arms, accoutrements and ammunition of the several corps, and every other thing, which in his judgment may relate to the government, and the general advancement of good order and military discipline; and the adjutant general shall make a return of all the militia of the State to the commander in chief of the said State, and a duplicate of the same to the President of the United States, annually, on or before the first Monday in January, in each year: and it shall be the duty of the Secretary of Brigade Inspector's duty. U. S. law May 12, 1820. Returns to be made to the adj. gen. Adj. gen. of the militia to make return to the President annually.

* No package sent by the mail, can exceed three pounds; as decided by the postmaster general in 1836.

Sec. of War to give him instructions. Act of March 2, 1803, § 1.

War, from time to time, to give such directions to the adjutant generals of the militia, as shall, in his opinion, be necessary to produce an uniformity in the said returns, and he shall lay an abstract of the same before Congress, on or before the first Monday of February, annually. And whereas sundry corps of artillery, cavalry and infantry, now exist in several of the said States, which by the laws, customs or usages thereof have not been incorporated with, or subject to the general regulations of the militia:

Certain corps to retain their privileges.

SEC. 11. *Be it further enacted*, That such corps retain their accustomed privileges, subject, nevertheless, to all other duties required by this act, in like manner with the other militia.

AN ACT to provide for calling forth the militia to execute the Laws of the Union, suppress Insurrections, and repel Invasions; and to repeal the Act now in Force for those Purposes. [February 28, 1795.]

SEC. 1. *BE it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That whenever the United States shall be invaded, or be in imminent danger of invasion from any foreign nation or Indian tribe, it shall be lawful for the President of the United States, to call forth such number of the militia of the state, or states, most convenient to the place of danger, or scene of action, as he may judge necessary to repel such invasion, and to issue his orders for that purpose, to such officer or officers of the militia, as he shall think proper. And in case of an insurrection in any state, against the government thereof, it shall be lawful for the President of the United States, on application of the Legislature of such state, or of the executive, (when the Legislature cannot be convened) to call forth such number of the militia of any other state or states as may be applied for, as he may judge sufficient to suppress such insurrection.

In case of invasion President may issue orders to militia officers.

In case of insurrection against a state, President may call out the militia of other states.

President to call out the militia to suppress combinations, &c.

SEC. 2. *And be it further enacted*, That whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any state, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by this act, it shall be lawful for the President of the United States, to call forth the militia of such state, or of any other state or states, as may be necessary to suppress such combinations, and to cause

the laws to be duly executed; and the use of militia so to be called forth may be continued, if necessary, until the expiration of thirty days after the commencement of the then next session of Congress.

To issue proclamation.

SEC. 3. *Provided always, and be it further enacted*, That whenever it may be necessary, in the judgment of the President, to use the military force hereby directed to be called forth, the President shall forthwith, by proclamation, command such insurgents, to disperse, and retire peaceably to their respective abode, within a limited time.

Militia when in service, to be subject to the articles of war.

SEC. 4. *And be it further enacted*, That the militia employed in the service of the United States, shall be subject to the same rules and articles of war, as the troops of the United States: And that no officer, non-commissioned officer, or private of the militia, shall be compelled to serve more than three months, after his arrival at the place of rendezvous, in any one year, nor more than in due rotation with every other able bodied man of the same rank in the battalion to which he belongs.

Term of service not to exceed three months, &c.

Penalty for not obeying orders, &c.

SEC. 5. *And be it further enacted*, That every officer, non-commissioned officer, or private of the militia, who shall fail to obey the orders of the President of the United States, in any of the cases before recited, shall forfeit a sum not exceeding one year's pay, and not less than one month's pay, to be determined and adjudged by a court martial; and such officer shall, moreover, be liable to be cashiered by sentence of a court martial, and be incapacitated from holding a commission in the militia, for a term not exceeding twelve months, at the discretion of the said court: And such non-commissioned officers and privates shall be liable to be imprisoned, by a like sentence, on failure of payment of the fines adjudged against them, for one calendar month, for every five dollars of such fine.

Courts-martial.

SEC. 6. *And be it further enacted*, That courts martial for the trial of militia shall be composed of militia officers only.

Fines assessed how to be levied.

SEC. 7. *And be it further enacted*, That all fines to be assessed, as aforesaid, shall be certified by the presiding officer of the court martial, before whom the same shall be assessed, to the marshal of the district, in which the delinquent shall reside, or to one of his deputies, and also to the supervisor of the revenue of the same district, who shall record the said certificate in a book to

be kept for that purpose. The said marshal, or his deputy, shall forthwith proceed to levy the said fines with costs, by distress and sale of the goods and chattels of the delinquent; which costs and the manner of proceeding, with respect to the sale of the goods distrained, shall be agreeable to the laws of the state, in which the same shall be, in other cases of distress. And where any non-commissioned officer or private shall be adjudged to suffer imprisonment, there being no goods or chattels to be found, whereof to levy the said fines, the marshal of the district, or his deputy, may commit such delinquent to gaol, during the term, for which he shall be so adjudged to imprisonment, or until the fine shall be paid, in the same manner, as other persons condemned to fine and imprisonment, at the suit of the United States, may be committed.

Marshal to pay over fines collected.

SEC. 8. *And be it further enacted*, That the marshals and their deputies shall pay all such fines by them levied, to the supervisor of the revenue, in the district in which they are collected, within two months after they shall have received the same, deducting therefrom, five per centum, as a compensation for their trouble; and in case of failure, the same shall be recoverable by action of debt or information, in any court of the United States, of the district in which such fines shall be levied, having cognizance thereof, to be sued for, prosecuted and recovered, in the name of the supervisor of the district, with interest and cost.

Powers of the Marshals of districts.

SEC. 9. *And be it further enacted*, That the marshals of the several districts, and their deputies, shall have the same powers in executing the laws of the United States, as sheriffs and their deputies, in the several states, have by law, in executing the laws of the respective states.

Former act repealed.

SEC. 10. *And be it further enacted*, That the act, entitled, "An act to provide for calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions," passed the second day of May, one thousand seven hundred and ninety-two, shall be, and the same is hereby repealed.

AN ACT making provision for Arming and Equipping the whole body of the Militia of the United States.

[April 23, 1808.]

SEC. 1. *BE it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the annual sum of two hundred thousand dollars be, and the same hereby is appropriated, for the purpose of providing arms and military equipments for the whole body of the militia of the United States, either by purchase or manufacture, by and on account of the United States. Annual appropriation for arms, &c.

SEC. 2. *And be it further enacted,* That the President of the United States be, and he hereby is authorized, to purchase sites for, and erect such additional arsenals and manufactories of arms, as he may deem expedient, under the limitations and restrictions now provided by law: *provided, also,* that so much of any law as restricts the number of workmen in the armories of the United States to one hundred men, be, and the same hereby is repealed. President authorized to purchase sites for arsenals, &c. Proviso.

SEC. 3. *And be it further enacted,* That all the arms procured in virtue of this act, shall be transmitted to the several states composing this Union, and territories thereof, to each state and territory respectively, in proportion to the number of the effective militia in each state and territory, and by each state and territory to be distributed, to the militia in such state and territory under such rules and regulations as shall be by law prescribed by the legislature of each state and territory. Arms to be distributed to the states, &c.

AN ACT to provide for the payment of Volunteers and Militia Corps, in the service of the United States.

[March 19, 1836.]

SEC. 1. *BE it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the officers, non-commissioned officers, musicians, artificers and privates, of volunteer and militia corps, who have been in the service of the United States, at any time since the first day of November, in the year of our Lord one thousand eight hundred and thirty-five, or may hereafter be in the service of the United States, shall be entitled to and receive the same monthly pay, rations, clothing or money in lieu thereof, Pay of officers, &c. of volunteer militia.

and forage, and be furnished with the same camp equipage, including knapsacks, as are, or may be provided by law for the officers, musicians, artificers and privates, of the infantry of the army of the United States.

Allowance of forage, &c.

SEC. 2. *And be it further enacted*, That the officers of all mounted companies who have been in, or may hereafter be in, the service of the United States, each shall be entitled to receive forage, or money in lieu thereof, for two horses, when they actually keep private servants, and for one horse when without private servants, and that forty cents per day be allowed for the use and risk of each horse, except horses killed in battle or dying of wounds received in battle. That each non-commissioned officer, musician, artificer and private, of all mounted companies, shall be entitled to receive forage in kind for one horse, with forty cents per day for the use and risk thereof, except horses killed in battle, or dying of wounds received in battle, and twenty-five cents per day in lieu of forage and subsistence, when the same shall be furnished by himself, or twelve and a half cents per day for either, as the case may be.

Mileage of officers, &c.

SEC. 3. *And be it further enacted*, That the officers, non-commissioned officers, musicians, artificers and privates, shall be entitled to one day's pay, subsistence, and other allowances, for every twenty miles' travel from their places of residence to the place of general rendezvous, and from the place of discharge back to their residence.

Provision for volunteers who may be wounded—

SEC. 4. *And be it further enacted*, That the volunteers or militia, who have been or who may be received into the service of the United States, to suppress Indian depredations in Florida, shall be entitled to all the benefits which are conferred on persons wounded or otherwise disabled in the service of the United States.

or die in service, &c.

SEC. 5. *And be it further enacted*, That when any officer, non-commissioned officer, artificer or private, of said militia or volunteer corps, who shall die in the service of the United States, or returning to his place of residence, after being mustered out of service, or at any time in consequence of wounds received in service, and shall leave a widow, or if no widow, a child or children, under sixteen years of age, such widow, or if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled, at the time of his death, for and during the term of five years; and in case of death or intermarriage of such

widow before the expiration of five years, the half pay for the remainder of the time shall go to the child or children of said decedent: *provided, always*, that the secretary of war shall adopt such forms of evidence, in applications under this act, as the President of the United States may prescribe.

SEC. 6. *And be it further enacted*, That the volunteers and militia mentioned in the foregoing provisions of this act, called into service before its passage, and who are directed to be paid, shall embrace those only ordered into service by the commanding general or governors of states and of the territory of Florida, under authority from the war department, for repressing the hostilities of the Florida Indians.

Massachusetts Militia Laws,

BEING

CHAPTER TWELVE OF THE REVISED STATUTES.

AS AMENDED BY OTHER ACTS THEREIN NAMED,

To go into operation from and after the 24th day of April, 1840.

EXEMPTIONS.

Absolute exempts.

SEC. 1. The persons, mentioned in this section, shall be absolutely exempted from military duty in this state, that is to say: besides the following persons absolutely exempted from military duty by the laws of the United States, viz. the vice president of the United States, the officers, judicial and executive, of the government of the United States, the members of both houses of congress, and their respective officers, all custom house officers with their clerks, all post masters, post officers, post riders, and stage drivers who are employed in the care and conveyance of the mail of the United States, all ferrymen, employed at any ferry on the post road, all inspectors of exports, all pilots, and all mariners actually employed in the sea service of any citizen or merchant within the United States; the persons hereinafter mentioned shall also be absolutely exempted, notwithstanding their age may be more than eighteen years and less than forty-five years, viz:

10 Pick. 153.

Justices of the supreme judicial court and court of common pleas.

Judges of the municipal court and of probate.

Registers of probate and of deeds.

Sheriffs.

All officers who have held, or may hereafter hold,

commissions in the army or navy of the United States, for the term of five years.

All officers, who have held, or may hereafter hold, commissions in the militia of this or any other state of the United States, for the term of five years, or who have been or shall be hereafter superseded and discharged, or who have held, or shall hereafter hold, commissions in any corps, at the time when it is disbanded, and all staff officers, whose offices shall become vacant by the provisions of the seventy-third section.

Ministers of the gospel, of every denomination.

The superintendents, other officers and assistants, employed in or about any department of the Massachusetts general hospital, in Boston and Charlestown, and in the state lunatic hospital at Worcester, during the time of such employment.

The officers and guards employed at the state prison in Charlestown, and in any of the jails and houses of correction in the Commonwealth.

ENROLLED MILITIA.

[Sections 2, 3, and 4, of R. S. ch. 12, repealed by Act of March 24, 1840.]

Who shall be enrolled. Act of March 1840, § 1.

SEC. 5. Every able-bodied white male citizen, resident within this Commonwealth, who is or shall be of the age of eighteen years, and under the age of forty-five years, excepting persons enlisted into volunteer companies, persons absolutely exempted by law, idiots, lunatics, common drunkards, vagabonds, paupers, and persons convicted of any infamous crime in this or any other state, shall be enrolled in the militia.

Assessors to prepare a list &c. Act of March 1840, § 2.

SEC. 6. It shall be the duty of the assessors to prepare a list annually of all persons liable to be enrolled, living within their respective limits. And every keeper of any tavern or boarding-house, and every master and mistress of any dwelling-house shall, upon application of the assessors within whose bounds such house is situated, or of any persons acting under them, give information of the names of all persons residing in such house, and liable to enrolment, or to do military duty, and every such person so liable, shall, upon the like application, give his name and age: and if any such keeper, master, mistress, or person aforesaid, shall refuse to give such information, or shall give information which is false, he or she shall be punished by fine, as is provided in such cases respectively by the one hundred and hird section.

Penalty for refusing to give information.

Assessors to deposite list with city or town clerks. Act of March 1840, § 3.

The assessors shall annually make out a roll or list of all the names of persons liable to be enrolled, and place it in the hands of the clerk of every city or town in the Commonwealth: and it shall be the duty of every such clerk, to record such roll, or list, of names in the book of record of every such city or town within the Commonwealth.

Annual returns how made. Act of March 1840, § 4.

SEC. 7. Annual returns of the militia, thus enrolled, shall be transmitted to the adjutant general, in the month of May or June, by the clerks aforesaid.

Active duty not required, except, &c. Act of March 1840, § 5.

SEC. 8. The militia, thus enrolled, shall be subject to no active duty whatever, except in case of war, invasion, or to prevent invasion.

Penalty for refusing to obey, &c. Act of March 1840, § 10.

SEC. 9. All civil officers named in the 6th, 7th, and 129th sections, who shall neglect or refuse, at any time to obey the provisions thereof, shall forfeit and pay not more than five hundred, nor less than twenty dollars, for each and every offence to be recovered, in any court of competent jurisdiction, for the use of the Commonwealth.

VOLUNTEER MILITIA.

Active militia, how composed, &c. Act of March 1840, § 11.

SEC. 10. The active militia of this Commonwealth, shall consist and be composed of volunteers, or companies raised at large; and in all cases shall *first* be ordered into service, in case of war, or invasion, or to prevent invasion—to suppress riots, or to aid civil officers in the execution of the laws of the Commonwealth.

Volunteers not to exceed 10,000, &c. Act of March 1840, § 13.

The whole number of volunteers shall not exceed ten thousand men, and shall be divided or apportioned, in each county, throughout the Commonwealth, according to population; in such manner, however, as to retain all the volunteer companies, with their officers, now raised and organized.

Act of March 1840, § 30.

If any county shall neglect or refuse to raise at large their quota of volunteers, according to the provisions of this section, the commander in chief may grant petitions to citizens of any other county to raise at large the prescribed number of volunteers, as herein provided.

ORGANIZATION.

Commander in chief may arrange the militia, &c.

SEC. 11. The commander in chief, with the advice of the council, is authorized to arrange the militia into divisions, brigades, regiments, battalions and companies, conformably to the laws of the United States, and

to make such alterations as, from time to time, may be deemed necessary; and each division, brigade and regiment, shall be numbered at the formation thereof, and a record made of such numbers in the adjutant general's office.

Commander in chief may grant petitions, &c. Act of March, 1840, § 12.

The commander in chief may grant petitions, or authorize the mayor and aldermen of any city, or selectmen of any town in the Commonwealth, to grant petitions for raising companies at large, to the number of ten thousand men, including the number already raised.

Elections may be ordered, when, &c. Act of March 1840, § 19.

Whenever forty-eight men shall have been enlisted and uniformed according to the provisions of this act, an election of officers may be ordered, upon notification being given by one or more of the petitioners, attested by the mayor and aldermen of any city, or the selectmen of any town in the Commonwealth, to the commander in chief; and if there is no officer of the volunteer corps conveniently located to preside at such election, the commander in chief may issue an order for that purpose to any one or more of the selectmen of the town where a majority of said petitioners may reside. No company, raised at large, shall consist of more than one hundred members.

Orders of commander in chief, how distributed.

Sec. 12. All orders, from the commander in chief to the several corps, shall be distributed by the adjutant general, and he shall obey all such orders, relative to carrying into execution and perfecting any system of military discipline, established by law.

Adjutant general to report expenditures. Act of April 20, 1837, § 4.

The adjutant general, shall annually in the month of February, lay before the governor and council, for adjustment, an account of all expenditures of money made by him, as adjutant general and acting quarter-master general, with vouchers to support the same; and such account shall be settled by the governor and council.

Adjutant general to report salaries paid, &c. Resolve of February 20, 1819.

The adjutant general shall make out an account to the first of January, in each year, specifying the amount of salaries and allowances made to the said officer, the number of clerks, by him employed, their names, the periods of service and the amount allowed them, with all expenses attaching to his office; and to report the same to the Legislature, which may then, or next thereafter be in session.

Magazines, &c. to be in custody of adjutant general, R. S. chap. 11, § 6.

The public magazines, the munitions of war, entrenching tools and all other implements of war, belonging to the Commonwealth, shall, when not in actual use, be in the custody of the adjutant general, who shall

at the public expense, provide suitable places for their safe keeping; and he shall also have the care and management of all lands held by the Commonwealth for military uses.

Tools, &c., to be marked, penalty for having them in possession. R. S. chap. 11, § 7.

All the tools and implements mentioned in the preceding paragraph, whether of wood or other material, shall be designated as the property of the Commonwealth, by suitable permanent brands, or marks, on each of them; and any person who shall purchase, retain, or have in his possession, any of the said tools or implements, so marked or branded, the same not having been delivered to him by any person thereto authorized, shall be deemed guilty of a misdemeanor, and be punished by fine, not exceeding ten times the just value of such tool or implement.

Unserviceable military stores may be sold. Resolve of June 14, 1822.

The commander in chief, with advice and consent of the council, is authorized, from time to time, to cause to be sold or exchanged, such military stores, belonging to the quarter master general's department, as may be found to be unserviceable or in a state of decay, or which in the opinion of the commander in chief and council, it may be for the interest of the Commonwealth should be sold or exchanged.

Quantity of powder to be kept in the arsenal in Boston.

Neither the quarter master general, nor any other person acting in the department of quarter master general, shall keep at any one time, at the state arsenal, in the city of Boston, or any other place within said city, a greater quantity of gunpowder than one hundred pounds.

No fireworks to be made at laboratory, &c. Resolve of Feb. 13. 1824.

No cartridges or tubes shall be filled, or portfires or other fireworks made, either for public or private use, at the laboratory in Boston; and no powder shall be kept in the magazine of the laboratory but in the original packages.

Volunteer companies to be numbered, &c. Act of March 1840, § 13.

SEC. 13. The several volunteer companies of cavalry, artillery, light infantry, riflemen and grenadiers, in each county, shall be numbered, and a record made of such numbers in the adjutant general's office, and where they exist in sufficient numbers, and are conveniently located for the purpose, shall be organized by the commander in chief, into regiments or separate battalions. And whenever any company of cavalry, artillery, light infantry, riflemen or grenadiers, shall not be so located, such company shall remain in command of its captain or commanding officer, subject to the orders of the commander in chief through the commanding officer of

the nearest located regiment; to which commanding officer such captain or subaltern, shall make his annual return.

Battalions and regiments of cavalry, &c.

SEC. 14. Each battalion of cavalry or artillery shall consist of not less than two nor more than three companies, and each regiment of cavalry or artillery of not less than four companies.

Orders and returns of volunteer companies not attached to regiments.

SEC. 15. All companies, which are attached to divisions or brigades, and not to regiments, shall be subject to the immediate order of the commanding officers of such divisions or brigades, until they are otherwise organized; and the commanding officers of divisions or brigades shall receive all returns and orders, have all the authority and perform all the duties, with regard to such companies, which are prescribed in this chapter to be received, exercised and performed, by the commanding officers of regiments and battalions, with regard to the companies of their respective regiments and battalions.

Volunteer companies twice refusing to elect officers may be disbanded.

SEC. 16. If any company, raised at large, shall at any time be destitute of commissioned officers, and, having been twice ordered to fill vacancies, shall neglect or refuse to fill them, or shall be reduced to a less number than twenty privates, and remain so reduced for three months, such company may be disbanded.

Volunteers holden for five years, except &c. Act of March 1840, § 17.

SEC. 17. Every non-commissioned officer and soldier, of any company raised at large, shall be holden to do duty therein, for the term of five years, from his enlistment, unless disability after enlistment, should absolutely incapacitate him to perform such duty, or he should be regularly discharged by the proper officer.

[Section 18. of R. S. ch. 12, repealed by act of March 24, 1840.]

Volunteers how discharged by brigadier.

SEC. 19. Every commanding officer of a brigade, upon application of the commanding officer of any company, raised at large, in his brigade, may discharge any non-commissioned officer or private from such company.

Brigade bands.

SEC. 20. Each brigadier general may raise, by voluntary enlistment, and organize, within his brigade, a band of music, not to exceed twenty-four musicians, including one master and two deputy masters, and may divide such band into sections, not exceeding three, and establish them in such parts of his brigade, as he may think most for the good of the service, and may grant to the master, deputy masters and privates, warrants as

such; and such band shall be under the direction and command of the officer commanding the brigade.

Duty of masters and deputy masters.

The master and deputy masters shall teach, lead and command such band, and issue all orders directed by said commanding officer; and the said commanding officer shall order at least one section of said band, to attend at each regimental review within the brigade.

Members to provide themselves with uniforms, &c.

And each member of such band shall provide himself with such uniform, as may be directed by the commander in chief, and keep himself provided with such instrument or instruments, as may be directed by the commanding officer of the brigade: and, for any neglect, deficiency or misconduct, shall forfeit such sums as are prescribed in such case, in the one hundred and second section, and may be dismissed from the band by the commanding officer of the brigade.

Penalties.

Artillery drivers.

SEC. 21. The commanding officer of each company of artillery may enlist three men to serve as drivers.

HOW OFFICERED.

General staff.

SEC. 22. The officers and non-commissioned officers of the militia shall be such as are described in this section:

A commander in chief.

An adjutant general, and a quarter master general, with the rank of brigadier general.

Aids to the commander in chief, not exceeding four in number, with the rank of lieutenant colonel.

Division officers.

To each division, there shall be one major general, and two aids de camp, with the rank of major; one division inspector, with the rank of lieutenant colonel; one division quarter master, with the rank of major; one judge advocate, with the rank of major.

Brigade officers.

To each brigade, there shall be one brigadier general; one brigade inspector, with the rank of major, to serve also as brigade major; one brigade quarter master, with the rank of captain; one aid de camp, with the rank of captain.

Regimental officers.

To each regiment, there shall be one colonel, one lieutenant colonel, and one major; one adjutant, one quarter master, and one pay master, each with the rank of lieutenant; one surgeon, one surgeon's mate, one chaplain, one sergeant major, one sergeant quarter master, one drum major, one fife major.

Battalion officers.

To each separate battalion, there shall be one major; one adjutant and one quarter master, each with the rank

of lieutenant; one surgeon; one sergeant major, and one sergeant quarter master.

To each company of light infantry, grenadiers, or riflemen, there shall be one captain; one first, one second, one third lieutenant; five sergeants; four corporals; one or more fifers, or buglers; and one or more drummers. Company officers. Act of March 1840, § 17.

To each company of artillery, there shall be one captain, one first and two second lieutenants, five sergeants, four corporals, one or more drummers, and one or more fifers, and three drivers.

To each company of cavalry, there shall be one captain, two lieutenants, one cornet, five sergeants, four corporals, one saddler, one farrier, and one or more trumpeters.

To every two or more companies of cavalry, artillery, light infantry, or riflemen, in a brigade, not attached to any regiment, there shall be one surgeon.

To every company, there shall be one clerk, who shall be one of the sergeants.

Provided, nevertheless, that every corps, organized before the eighth day of May, in the year one thousand seven hundred and ninety-two, shall continue to be officered as before that time.

Sec. 23. Whenever the office of major general, brigadier general, colonel, major commandant, or captain, shall be vacant, or such officer shall be sick or absent, the officer next in rank shall command the division, brigade, regiment, battalion, or company, until the vacancy be supplied: and whenever the office of quarter master general shall be vacant, the duties thereof shall be performed by the adjutant general. In cases of vacancy, &c. officers next in rank to command.

Sec. 24. Whenever a company shall have neither commissioned nor non-commissioned officers, the commanding officer of the regiment or battalion, to which such company belongs, shall appoint suitable persons, within said company, to be non-commissioned officers of the same, and shall appoint one of the non-commissioned officers to be clerk, and indorse the appointment on his warrant, and administer the oath to him, and certify the same, as required by the fifty-first and sixty-sixth sections: and the senior non-commissioned officer of a company without commissioned officers, shall command the same, except upon parade, and except as is provided in the following section. Companies without officers, how commanded.

Sec. 25. Whenever any company shall be without

Companies without officers refusing to elect, how commanded.

officers, from any cause whatever, and an election of officers shall be ordered, and such company shall neglect or refuse to elect any officer, or no persons elected shall accept, the commanding officer of the regiment or battalion, to which such company belongs, shall detail some officer of the staff, or of the line of the regiment, to train and discipline said company, until some officer shall be elected or appointed by the commander in chief, as provided in the fifty-ninth section: and such officer shall have the same power and authority, and be subject to the same liabilities, as if he were captain of such company; and he shall keep the records of the company and prosecute for all fines and forfeitures, in like manner as a clerk might do, by the provisions of the one hundred and twelfth section; and all meetings of such company shall be notified, as provided in the ninety-first section.

Records how kept.

Meetings how notified.

Duties of clerk, how performed in case of vacancy.

SEC. 26. Whenever the office of clerk in any company shall become vacant, and it shall appear to the commanding officer of said company, that there is satisfactory evidence, that no person will accept the same, he may issue his order in writing to any non-commissioned officer or private in said company, requiring him to perform all the duties of clerk of said company, except keeping the records, for a term not exceeding three months; and if any non-commissioned officer or private, so appointed, shall refuse or neglect to perform all or any of the duties of said office, during said term, (except keeping the records,) he shall forfeit and pay the sum provided in such case, in the one hundredth section, to the use of the company.

Clerk pro tem when and how appointed.

And in case of the absence, sickness, or other inability of the clerk of any company, the commanding officer of the company may appoint a clerk pro tempore; or, upon satisfactory evidence, that no one in the company will accept the office pro tempore, he may order any non-commissioned officer or private, in like manner, to perform all the duties of the office of clerk, until the clerk shall be able to perform the same, or some other person shall be appointed; and any person so ordered, refusing or neglecting to perform all the duties of said office, shall be liable to the penalties provided in such case, in the one hundredth section.

Records, how kept—to be evidence.

In all such cases, the records of the company shall be kept by the commanding officer, as long as such vacancy, absence, sickness or inability shall continue; and the

records so kept shall be competent evidence of such orders and temporary appointments, as well as of all other matters, of which such records would be evidence, if kept by the clerk.

ROSTERS, ROLLS AND RETURNS.

Rosters and orderly books, by whom kept. Act of April 20, 1897, § 8.

SEC. 27. The division inspector of each division, the brigade major of each brigade, and the adjutant of each regiment, battalion, or corps, shall constantly keep a correct roster of the division, brigade, regiment, battalion, or corps, to which they respectively belong, and an orderly book, in which they shall record all orders received and issued.

Rolls, how kept.

—to be annually revised in May.

SEC. 28. A fair and exact roll of each company shall be kept by the clerk, under the direction of the commanding officer, with the state of the arms and equipments, belonging to each man, in the form prescribed by the commander in chief, for the returns of the militia; and the rolls shall be annually revised in the month of May, and shall also be corrected, from time to time, as the state of the company and the alterations in it may require.

Company orderly books, how kept.

SEC. 29. An orderly book shall also be kept in each company by the clerk, under the direction of the commanding officer, and all the proceedings of the company, all orders received and issued, and exact details of all drafts and detachments shall be recorded therein.

Delinquencies, fines, and moneys received, &c. to be recorded

All delinquencies and deficiencies, accounts of all fines and forfeitures, and other moneys collected by him, with the persons' names of whom they were collected, and the times when, and for what offence, neglect, default or deficiency they were incurred, shall also be recorded in said book, which shall not be alienated from the company, and shall always be open to the inspection of any officer of the company.

Orders by whom distributed.

SEC. 30. All general orders shall be distributed by the adjutant general, all division orders by the division inspector, all brigade orders by the brigade major, all regimental and battalion orders by the adjutant, all company orders by the clerk, or by any non-commissioned officer or private, whenever they shall be severally required by the commanding officer.

Inspection returns of companies, how made.

SEC. 31. Every captain or commanding officer of a company shall make a return of the state of his company, comprehending the names of all the men belonging thereto, and all their arms, equipments and ammunition,

to the commanding officer of the regiment or battalion, in the month of May annually, according to the form furnished by the adjutant general; and the commanding officer of any divisionary corps shall make a duplicate return to the adjutant general within said month.

Returns of regiments and battalions.

Every commanding officer of a regiment or battalion shall make a return of the state of his regiment or battalion, to the commanding officer of the brigade, in the month of June annually; and every commanding officer

—of brigades.

of a brigade shall make and transmit returns of the state of his brigade, to the commanding officer of the

—of divisions.

division to which he belongs, in the month of July annually, and every commanding officer of such division shall make and transmit returns of the state of his division to the adjutant general, in the month of August annually.

Act of April 20, 1837, § 5.

Muster returns.

SEC. 32. The brigade major and inspector shall make returns to the adjutant general, once in each year, of the militia of the brigade to which he belongs, reporting therein the actual situation of the arms, accoutrements, and ammunition of the several corps, and every other thing, which, in his judgment, may relate to the government of the militia, and to the general advancement of good order and military discipline.

Adjutant general's returns to the governor and president.

SEC. 33. The adjutant general shall make proper abstracts from the returns of the commanding officers of divisions, brigades and divisionary corps, and lay the same before the commander in chief annually.

He shall also make a return annually in duplicate of all the militia in the state, with their arms, accoutrements, and ammunition, according to such directions, as he may receive from the secretary at war of the United States, one copy of which he shall deliver to the commander in chief, and transmit the other to the president of the United States, on or before the first Monday in January annually.

Blank forms of rolls and returns.

5 Greenl. 439.

SEC. 34. Every roll shall be kept in the form prescribed by the commander in chief, for the returns of the militia. And the adjutant general shall furnish blank forms of rolls and of the different returns that may be required, and explain the principles upon which they

9th § of R. S.

should be made; and shall also furnish to every company, suitable blanks and instructions thereon.

Annual lists of volunteer companies to be furnished to colonels.

SEC. 35. The captain or commanding officer of every company raised at large, shall, annually, in the month of April, make out a list or lists of the names of the

men belonging to his company, and deliver the same to the commanding officer of each regiment, within whose bounds any of such men reside.

Officers, how equipped. Arms, &c. to be inspected.

SEC. 36. The commissioned officers shall be severally provided with a sword or hanger. The arms, ammunition, and accoutrements of the militia shall be inspected by the brigade inspectors, at the annual reviews of militia, composing their several brigades.

[Sections 37 and 38, of R. S. chap. 12, repealed by act of March 24, 1840.]

What uniform to be provided.

SEC. 39. Every officer of the line and staff, and every officer and soldier of any company raised at large, shall provide himself with an uniform complete, which shall be such as the commander in chief shall prescribe, and subject to such restrictions, limitations, and alterations as he may order; and every such soldier deficient therein shall be liable to the penalty provided in the ninety-ninth section.

Cavalry, how equipped.

SEC. 40. Every non-commissioned officer and private in a company of cavalry shall furnish himself with a serviceable horse, at least fourteen hands and a half high, a good saddle, bridle, mail pilion and valise, holsters, and a breast-plate and crupper, a pair of boots and spurs, and a cartouch box to contain twelve cartridges suited to his pistols, and shall be liable, for deficiencies at any parade, to the forfeitures provided in such case in the ninety-ninth section; and if any non-commissioned officer or private shall, for more than three months, be unprovided with a horse and equipments as aforesaid, the commanding officer of his company may apply to the commanding officer of the brigade, who shall discharge such non-commissioned officer or private from such company.

If unprovided with horse, &c. more than three months to be discharged.

Artillery to have cannon, &c.

SEC. 41. Every company of artillery shall have the field pieces, apparatus and other articles specified in the forty-fourth section.

Uniform, arms, &c. exempt from attachment, &c.

SEC. 42. Every officer, non-commissioned officer and private, shall hold his uniform, arms, ammunition and accoutrements required by law, free from all suits, distresses, executions, or sales for debt or payment of taxes.

ARTICLES FURNISHED.

Colors to be furnished and preserved.

SEC. 43. Each regiment and battalion shall be furnished by the Commonwealth with the state and regimental colors, and their staffs, belts and sockets, and the commanding officer of such regiment or battalion shall be responsible for the safe keeping of the same.

Volunteer companies to be furnished with muskets, &c. and to give bond, &c. Act of March 1840, § 20.

Each company of light infantry, grenadiers, and riflemen, raised at large, shall be furnished with muskets or rifles, and every company of cavalry, with sabres, belts, and pistols, and every company of artillery with muskets if applied for, and with swords and belts, on application to the adjutant general, and on delivering to him a sufficient bond, signed by the officers of such company, for the safe keeping and return of the same when required by the commander in chief, and producing to him satisfactory evidence that a suitable armory or place of deposite for such muskets or rifles has been provided by the town within which said company is situated or otherwise; which arms so furnished shall be carefully kept for the use of the company for military purposes only. The commander in chief may, from time to time, require any officer to examine any armory provided as aforesaid, and report to him the condition thereof, and of the arms therein deposited.

Towns to provide armories.

And the several towns in the Commonwealth are hereby authorized to raise money to be expended in providing armories, or places of deposite, as above provided.

Arms, where deposited.

And whenever any arms are furnished as aforesaid, to any company formed from different towns, the same shall be deposited in the town within which the greatest number of the members of said company may vote to establish their armory.

Instruments of music to be furnished and preserved.

Each company of artillery, infantry, grenadiers, light infantry and riflemen, shall be furnished with a drum and fife, or bugle horn, and each company of cavalry with a trumpet, and all of them with more or other instruments of music, as the commander in chief shall order; and each commanding officer of a brigade is authorized to draw orders upon the quarter master general, or officer acting as such, in favor of the commanding officers of regiments, battalions and companies, for such colors and instruments of music; and the commanding officers of companies shall be responsible for the safe keeping of the instruments of music, delivered to them for the use of their companies.

Blank rolls, &c. to be furnished.

Blank rolls, returns, company orders, and notifications to the soldiers, shall be furnished by the adjutant general, as provided in the thirty-fourth section.

Cannon, &c. to be furnished to artillery.

Sec. 44. Each company of artillery shall be provided, by the quarter master general or officer acting as such, with two good brass field pieces, of such calibre as the commander in chief shall direct, with carriages

and apparatus complete; with an ammunition cart, forty round shot, forty rounds of cannister shot, tumbrils, harness, implements, laboratory and ordnance stores, which may, from time to time, be necessary for their complete equipment for the field; and a quantity of powder, annually, not exceeding one hundred pounds, to be expended on days of inspection and review, and in experimental gunnery; and the commanding officer of each company shall be accountable for the preservation of the pieces, apparatus and ammunition aforesaid, and for the proper expenditure of the ammunition. and preserved.

SEC. 45. The commanding officer of each company, at every inspection and review, and whenever the company shall be ordered to march out of the town, where the gun house is situated, shall provide horses to draw the field pieces and tumbril, and present his account of the expenses thereof, as provided in the one hundred and twenty-eighth section. Horses to be provided.

SEC. 46. Whenever, in the opinion of the commander in chief, it shall be necessary, he shall issue his proclamation, requiring all towns to provide and depos- ite, in some suitable and convenient place therein, sixty-four pounds of good powder, one hundred pounds of musket balls, each of the eighteenth part of a pound; one hundred and twenty-eight flints, suitable for muskets; three copper, iron or tin camp kettles, for every sixty-four soldiers enrolled in said town, and the same proportion of the aforesaid articles for a greater or less number; and so to keep the same, until he shall by proclamation declare the same no longer necessary. Towns to provide powder, &c. when required by commander in chief. Act of April 20, 1837, § 10.

Any town, which shall neglect to provide and keep deposited all or any of the aforesaid articles as above required, shall forfeit the sum provided in the one hundred and sixth section. Fines for towns neglecting to provide, &c.

[Section 47 repealed by the 11th section of Act of April 20, 1837.]

APPOINTMENT AND ELECTIONS OF OFFICERS.

SEC. 48. The officers of the line of the militia shall be elected in manner following: Officers of the line, how elected.

Major generals, by the senate and house of representatives, each having a negative upon the other:

Brigadier generals, by the written votes of the field officers of the respective brigades:

Field officers of regiments and battalions, by the writ-

ten votes of the captains and subalterns of the respective regiments or battalions:

Captains and subalterns of companies, by the written votes of the non-commissioned officers and privates of the respective companies.

Staff officers, how appointed.

SEC. 49. The staff officers of the militia shall be appointed in manner following:

The adjutant general by the commander in chief:

Military storekeeper, appointment and duties. Resolves of June 16, 1821, and Feb. 16, 1824.

The adjutant general is authorized to appoint a military store keeper, who shall be under his direction, perform such services as shall be required, and follow and obey such instructions and orders as he shall from time to time receive, relativeto the care of the laboratory in Boston and the arsenal in Cambridge, as well as to the preservation and distribution of the public property there deposited; and the said store keeper shall be removable at the pleasure of the adjutant general.

The quarter master general, by the commander in chief, with the advice and consent of the council:

The aids to the commander in chief, by the commander in chief:

Act of April 20, 1837, § 2.

The division inspectors and division quarter masters, shall be appointed by the respective major generals, and approved by the commander in chief:

The aids de camp of major generals, by the respective major generals:

The judge advocates, by the respective major generals, and approved by the commander in chief:

The brigade majors, and inspectors, brigade quarter masters, and aids de camp to brigadier generals, by the respective brigadier generals:

Adjutants, pay masters, quarter masters, chaplains, surgeons, and surgeons' mates of regiments, by the respective colonels.

Adjutants, quarter masters, and surgeons of battalions, by the respective commanding officers:

Surgeons of two or more independent companies in a brigade, by the brigadier general.

Non-commissioned officers, how appointed.

SEC. 50. The non-commissioned officers in the militia shall be appointed in manner following:

Sergeant majors, sergeant quarter masters, drum majors and fife majors of regiments, by the commanding officer of the regiment.

Sergeant majors and sergeant quarter masters of battalions, by the officer commanding:

Non-commissioned officers of companies, by the re-

spective captains, who shall forthwith return the same in writing to the commanding officer of the regiment or battalion:

Clerks, by the commanding officers of the respective companies.

Officers, how commissioned.

SEC. 51. All commissioned officers shall be commissioned by the commander in chief, according to the respective offices and grades, to which they may be elected or appointed.

Warrants of non-commissioned officers.

Every non-commissioned officer's warrant shall be given and signed by the commanding officer of his regiment or battalion.

Certificates of clerks' appointments. 11 Pick 365. 8 Pick. 449.

Clerks shall have their appointments certified on the back of their warrants, by the commanding officers of their respective companies.

Persons ineligible to military offices. When such persons elected, commander in chief to appoint.

SEC. 52. No idiot, lunatic, common drunkard, vagabond, pauper, nor any person convicted of any infamous crime, nor any other than white, able bodied, male citizens, shall be eligible to any office; and whenever it shall appear to the commander in chief, that any person, thus ineligible, has received a majority of the votes cast at any election of officers, he shall not commission him, but with the advice and consent of the council, shall declare said election null and void, and appoint some person to fill the vacancy.

Rank of officers, how determined.

SEC. 53. All commissioned officers shall take rank, according to the date of their commissions; and when two of the same grade bear an equal date, their rank shall be determined by lot, to be drawn by them before the commanding officer of the division, brigade, regiment, battalion, company or detachment, or president of a court martial, as the case may be.

Commission shall express date of appointment.

The day of the appointment of election of any officer shall be expressed in his commission, and shall be considered as the date of his commission. Whenever he is transferred to another corps or station of the same grade, the date of the original appointment shall be so expressed and considered the date of his commission.

Loss of commission supplied.

SEC. 54. Whenever any officer shall lose his commission, upon his affidavit made before any judge or justice of a court of record, and produced to the adjutant general, a duplicate commission shall issue of the same tenor and date.

Major general notified of his election, to signify, &c.

SEC. 55. Whenever any person shall be elected major general, he shall be notified of his election by the secretary of the Commonwealth, and shall, within thirty

days after such notice, signify to the secretary his acceptance of said office, otherwise he shall be taken to have refused the same.

Major generals to order elections of all commissioned officers.

SEC. 56. The major general of each division shall order elections to fill all vacancies which shall occur in his division in the office of brigadier general, field officer, captain or subaltern officer; and such elections shall be ordered, throughout each division, at least once in each year, the elections of company officers first, and those of field officers next.

Electors to have ten days notice.

SEC. 57. All electors shall be notified of elections at least ten days previously thereto.

Who may preside at elections.

SEC. 58. No officer, below the rank of a field officer, shall preside at any election of any officer above the rank of a subaltern officer, except in the case as provided for in the 11th section; nor shall any officer, who is a candidate for the vacant office, preside at the election, except to adjourn the meeting, if no field officer appear to preside.

Officers elected, how notified.

When it shall appear that any person has a majority of written votes of the legal electors, the presiding officer shall forthwith notify him of his election, and

Elections and refusals, how returned.

make return of every election, or neglect or refusal to elect, to the commanding officer of the division; and

Acceptances when notified.

every person so elected and notified shall declare his acceptance, if a brigadier general or field officer, within ten days, or, if a company officer, forthwith, otherwise it shall be taken that he has refused such office. And

Refusals at the time, how recorded.

if, before the meeting for the election of any officer is dissolved, the person chosen shall signify to the presiding officer his refusal to accept such office, the same shall be recorded and make part of his return, and he

Elections may be twice adjourned; two days each.

shall cause the electors to proceed to the choice of some other person. Elections may be adjourned, not exceed-

What number of electors must be present. Act of April 20, 1837, § 6.

ing twice, and each adjournment for a period, not exceeding two days, and a majority of the legal voters present at any company election, duly notified, may elect company officers.

Rosters and rolls to be produced at elections.

The original roster of the brigade, regiment, or battalion, or the original roll of the company, as the case may be, shall be produced at such elections, by the person having the legal custody of the same.

When electors refuse, governor may appoint, &c.

SEC. 59. Whenever the electors shall neglect or refuse to elect some person to fill a vacant office, the commander in chief, with the advice and consent of the council, shall appoint some suitable person to the

same; and if any company raised at large shall, at any two or more elections, neglect or refuse to elect any officer, it may be disbanded by the commander in chief.

Returns of elections, &c.

The commanding officer of the division shall return all elections, and refusals or neglects to elect, to the commander in chief, and unless, in the case above provided, he shall be notified by the commander in chief of his intention to make an appointment, he may, (if necessary,) order a new election.

New election ordered, unless, &c.

Elections in companies without officers may, &c.

SEC. 60. Whenever any company shall be without commissioned officers, the commanding officer of the regiment or battalion, without any order from the commanding officer of the division, may order an election of officers to the same as soon as may be, and preside, or detail some field officer to preside; and all proceedings shall be had as before provided.

Commissions, how transmitted.

SEC. 61. All commissions shall be transmitted to the commanding officers of divisions, and by them, through the proper officers, to the officers elected.

Notice given, if officers refuse to be qualified.

SEC. 62. Whenever any person, elected or appointed to any office, shall refuse to accept his commission, or to qualify himself at the time of his acceptance, the major general shall certify the fact on the back thereof, and return the same to the adjutant general; and if the office be elective, a new election shall be ordered.

Candidates not to treat with ardent spirits.

SEC. 63. It shall not be lawful for any candidate for any office in the militia, either pending or after an election, to treat with ardent spirits the persons attending such election.

Persons on military duty, privileged from arrest on civil process.

SEC. 64. No officer, non-commissioned officer, or private, shall be arrested on any civil process, while going to, remaining at, or returning from, any place, at which he may be ordered to attend, for election of officers or other military duty.

OFFICERS, HOW QUALIFIED.

Oath of commissioned officers.

SEC. 65. Every commissioned officer, before he enters on the discharge of the duties of his office, or exercises any command, shall take and subscribe the following oaths and declarations.

"I, A. B., do solemnly swear, that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the Constitution thereof. So help me God."

"I, A. B., do solemnly swear and affirm, that I will faithfully and impartially discharge and perform all the

duties incumbent on me as , according to the best of my abilities and understanding, agreeably to the rules and regulations of the Constitution and the laws of this Commonwealth. So help me God."

"I, A. B., do solemnly swear, that I will support the Constitution of the United States."

How administered and certified.

Which oaths each commissioned officer shall take and subscribe, before some justice of the peace, or before some general or field officer, who has previously taken and subscribed them himself; and on the back of every commission, the following form of certificate of qualification shall be printed, and shall be signed by the person, before whom such officer is qualified:

Form of certificate.

This may certify that A. B., commissioned as within on this day of A. D. personally appeared and took and subscribed the oaths required by the Constitution and laws of this Commonwealth, and a law of the United States, to qualify him to discharge the duties of his office. Before me,

Clerk's oath.

SEC. 66. Every clerk of a company, before he enters upon the duties of his clerkship, shall be sworn to the faithful discharge of his duty, by taking the following oath, before the commanding officer of the company to which he belongs, who is hereby authorized to administer the same, viz.

"I, A. B., do solemnly swear, that I will faithfully and impartially perform all the duties incumbent on me, as clerk of the company to which I belong, according to the best of my abilities and understanding. So help me God."

Certificate.

The commanding officer of such company shall, at the time of administering said oath, certify on the back of the warrant of the sergeant, appointed to be clerk, that he was duly qualified, by taking the oath required by law.

HOW OFFICERS ARE DISCHARGED.

Discharges of officers upon their own request.

SEC. 67. Whenever any officer of the militia shall in writing request his discharge, and his request shall be approved by the commanding officers of the regiment or battalion, brigade and division, to which he belongs, the commander in chief may discharge him from the office which he holds.

Time and conditions of resignations.

SEC. 68. No commanding officer shall approve a resignation, as provided in the preceding section, if the same be offered between the first day of May and

the first day of November, unless the reasons for such resignation be very urgent and proved to his satisfaction, and the rolls, orderly book, roster, and all other documents, which were in the custody of the officer resigning, shall be taken care of, for his successor or the officer having a right to the custody of the same, before his discharge is delivered to him.

Remedy in case of unreasonable refusal to approve resignations.

SEC. 69. If any officer shall unreasonably refuse to approve any resignation, and the same be made to appear to the officer or officers above him in command, he or they may approve the same notwithstanding, and the commander in chief may, in all cases, discharge the officer, if it shall appear to him proper.

No resignations while under arrest.

SEC. 70. No officer shall resign while under arrest.

Discharges without request.

SEC. 71. No officer shall be discharged by the commander in chief unless upon his own request, except in the following cases:

Of persons unable and unfit, and convicts.

With the advice and consent of the council, upon petition of one or more of his superior officers, when it shall appear to the commander in chief, that he has become unable or unfit to discharge the duties of his office, and to exercise proper authority over his inferior officers and soldiers, or that he has been convicted of any infamous crime.

Persons who have removed.

When the commanding officer of his division shall certify, that he has, either before or after receiving his commission, removed his residence, out of the bounds of his command, to so great a distance, that in the opinion of such commanding officer, it is inconvenient that he should exercise his command.

Absent more than one year without leave.

When such commanding officer shall certify that he has been absent from his command more than one year, without leave of such commanding officer.

Upon address of legislature.

Upon address of both houses of the legislature to the governor.

By sentence of court martial.

Upon sentence of a court martial, after a trial according to law.

By disbanding of corps.

When the corps to which he belongs is disbanded according to law. In all which cases, he may be discharged by the commander in chief, and every officer shall perform the duties of his office, (except he be under arrest,) until he be so discharged, whether upon his own request or as above provided.

Discharges by appointment in the army.

SEC. 72. When any officer of the militia of this Commonwealth shall accept any appointment in the army of the United States, his office shall thereby become vacant, and be again filled according to law; and

if, after accepting such appointment, he shall exercise any of the powers and authority of such office, he shall suffer the penalty provided in such case, in the one hundred and first section.

Penalty for continuing to act

Expiration of commissions of staff.

SEC. 73. The commissioners of all staff officers, appointed by any commanding officer, shall expire after such commanding officer shall be discharged, or vacate his office as soon as his successor is commissioned.

Resignation of clerks and non-commissioned officers

9 Pick. 41.

R S chap. 12, §10.

SEC. 74. Any non-commissioned officer or clerk of a company may resign his office to the commanding officer of his company, and be discharged from it by him.

If any non-commissioned officer or private shall, in due course of law, be convicted, in this or any other state, of any infamous crime, he shall be forthwith disenrolled from the militia.

DISCIPLINE, INSPECTION, TRAININGS, AND REVIEWS.

System of discipline.

SEC. 75. The system of discipline and field exercise which is ordered to be observed by the regular army of the United States, in the different corps of cavalry, infantry, artillery, light infantry and riflemen, or such other system, as may at any time hereafter be directed for the militia, by the laws of the United States, shall be observed by the militia in the discipline and exercise of said corps respectively.

Company parades

Act of March, 1840, § 23

SEC. 76. There shall be *three* parades, in each and every year, as follows:—Every commanding officer of a company raised at large, shall parade his company on the last Wednesday in May, annually, at nine o'clock in the forenoon, for the purpose of inspecting, examining, and taking an account of all the equipments of his men, and for noting all delinquencies of appearance, and deficiencies of uniform and equipments, in order that a thorough inspection may be made of all the volunteer companies in the Commonwealth; and the clerk shall note all deficiencies and delinquincies, and revise and correct the company roll, under the direction of the commanding officer. Every commanding officer of a company shall exercise and discipline as well as inspect his company on said day.

Every commanding officer, as aforesaid, shall also parade his company for exercise and discipline, two several days in addition thereto by his own order.

Selections from militia law to be read.

SEC. 77. Such sections of this chapter, as the commander in chief may from time to time order, shall be read at the head of each company on the day of inspection.

Annual inspection and reviews. Act of March 1840, § 24.

SEC. 78. There shall also be an inspection and review in each year, and the commanding officer of each division shall order the troops to parade for that purpose, in such bodies and corps, and at such times, *after* the second Thursday in September, as he shall deem expedient, regard being had to the scattered or compact situation of the troops; provided that no regiment or battalion be divided. The commanding officer of the brigade shall appoint the place, and give notice thereof to the commanding officer of the division. But if all the troops, to be inspected and reviewed, belong to one regiment or battalion, then the commanding officer of the regiment or battalion shall appoint the place, and give notice to the brigadier general; and the places appointed for inspection and review, shall be as central as, in the judgment of the officer appointing the place, may be convenient. Provided, that no officer, non-commissioned officer, or private, shall be obliged to march more than fifteen miles from his residence to any review, except of a regiment or battalion, or less body of men, and that no larger body than a brigade be ordered to parade at the same time and place, except by order of the commander in chief.

Orders for reviews, &c., when issued.

All orders for review and inspection shall be issued ten days at least, previous to the second Thursday in September, and all commanding officers of companies may, on parade, read brigade or regimental orders, and notify the soldiers of their several commands to appear, as specified in said brigade or regimental order, for the purposes therein contained, which notice shall be a sufficient warning.

Rank of divisions, &c. in the field.

SEC. 79. Each division, brigade and regiment shall, when in the field, take rank according to its number, beginning with the lowest number as highest in rank, and the companies in each regiment or battalion shall form according to the rank of the officers present commanding them; and whenever distinct corps shall parade, join, or do duty together, the senior officer present shall command without regard to corps.*

Senior officer to command.

* The following is the rank of corps as established by the General Regulations for the Army. 1st, The light or horse artillery.—2d, The light dragoons.—3d, Other regular cavalry.—4th, The foot artillery.—5th, The infantry.—6th, Detachments of United States marine corps, serving on land —7th, the riflemen —8th, Volunteer corps.—9th, Militia Drafts.

Company without officers, how commanded at reviews.

Whenever any company, destitute of commissioned officers, shall parade with other troops, the commanding officer present shall detail some commissioned officer or officers present to command the same, unless the officer detailed by the commanding officer of the regiment, to discipline and command them by the provisions of the twenty-fifth section, shall be present.

Bounds of parade may be fixed.

SEC. 80. Every commanding officer, when on duty, is hereby authorized to ascertain and fix necessary bounds and limits to his parade, (not including any road on which people travel, so as to prevent their passing) within which no spectator shall have a right to enter, without leave from such commanding officer, and in case any person shall intrude within the limits of the parade, after being once forbidden, he may be confined under guard, during the time of parade, or a shorter time, at the discretion of the commanding officer: and any person, who shall resist any sentry who attempts to put him out of such limits, or keep him out of the same, may be arrested by order of such commanding officer, and carried before some court or magistrate, to be examined or tried for such assault, or disturbance and breach of the peace, upon complaint thereof.

Punishment of intrusion. 13 Mass. 299.

Brigade majors, &c to attend inspections of regiments, &c.

SEC. 81. The brigade majors and inspectors shall attend the inspections and reviews of the regiments and battalions in their several brigades, during the time of their being under arms, inspect their arms, ammunition and accoutrements, superintend their exercises and manœuvres, and introduce the system of military discipline, required by law and by the orders which shall be received from time to time from the commander in chief, and shall make returns as provided in the thirty-second section.

Adjutant general, when to attend reviews

SEC. 82. The adjutant general shall attend all reviews when the commander in chief reviews the militia.

Ball cartridges, how inspected.

SEC. 83. The ball cartridges, required by law, shall be inspected at such place, as may be appointed by the officer commanding the field. No non-commissioned officer or private shall, unnecessarily, or without order from a superior officer, come to any parade, with his musket, rifle or pistol, loaded with ball, slugs or shot, or shall so load the same while upon parade, under the penalty provided in such case by the one hundredth section, nor shall, unnecessarily, or without order from a superior officer, discharge his musket, rifle or pistol,

Penalty for bringing loaded arms, except, &c.

when going to, returning from, or being upon parade, under the penalty provided in such case in said section.

Treating with ardent spirits forbidden.

SEC. 84. No officer shall treat with ardent spirits, on days of military duty, any person or persons performing such duty.

No parades on days of certain town meetings, except, &c.

SEC. 85. No officer, non-commissioned officer or private shall be holden to perform any military duty on any day (except the last Wednesday in May,) appointed for a meeting in the town in which he resides, for the election of governor, lieutenant governor, senators, electors of president or vice president of the United States, or representatives to congress or the general court, except in case of invasion, insurrection, riot or tumult made, or threatened, or in obedience to the orders of the commander in chief.

Penalty for ordering them.

Any officer, who shall order his men to parade, contrary to the provisions of this section, shall be liable to the penalties provided in such case, in the one hundred and first section.

Commander in chief may order escort &c.

SEC. 86. The commander in chief shall have power to order out such portions of the militia as may seem to him expedient, for the performance of escort and other duties.

Pay of Music when on escort duty. Resolve of June 26, 1811.

Whenever the commander in chief of the militia of this Commonwealth shall direct any militia company, or other corps, to perform escort duties, the commanding officer of such company or corps shall present his account for necessary music to the quarter master general, by whom the same shall be discharged out of the Commonwealth's moneys in his hands.

Voluntary parades not prohibited.

SEC. 87. Nothing herein contained shall be so construed, as to prevent any company from meeting for the purpose of drill, funeral, or other escort, or any voluntary service, nor to impair any obligation, arising under any constitutional article, or articles of agreement, adopted by any company, so far as regards the members who have signed the same, unless they are repugnant to law; and all fines, penalties and assessments, incurred by any officers or soldiers of such company, under any such constitutional article, or articles of agreement, signed by them, and which have been approved by the commander in chief, may, in addition to any other remedy thereon, be recovered by complaint, in the manner prescribed by the one hundred and twelfth section, so far as the same is applicable thereto; and the forms may be varied according to the exigency of the case.

Constitution of companies binding, so far, &c.

Remedy for breach thereof.

Who shall notify trainings. 13 Mass. 438. 9 Pick. 41. 557.

SEC. 88. Whenever the commanding officer of any company shall order out his company, for inspection of arms, company training, or inspection and review, or for election of officers, he shall issue his orders, to some one or more of the non-commissioned officers or privates, to notify the men enrolled in said company, to appear at the time and place appointed; and each non-commissioned officer and private, so ordered, shall give notice of the time and place, appointed for the parade of such company, to every person whom he shall be ordered to notify, under the penalties prescribed, in such case, by the one hundredth section.

Requisites of notifications. 8 Mass. 279 9 Pick. 40. 4 Pick. 25. 123. 16 Mass. 194.

SEC. 89. No notice shall be legal except as is provided in the following section, unless the same be given by the non-commissioned officer or private, ordered to notify, to each man, either verbally or by leaving, at his usual place of abode, a written or printed order, signed by such non-commissioned officer or private, four days at least previously to the time appointed, if for inspection of arms or company training; and ten days previously thereto, if for election of officers; provided nevertheless, that in case of invasion, insurrection, riot, or any unforeseen or sudden occasion, any verbal, written or printed notice, however short, shall be legal and binding; and whenever any company shall be paraded, the commanding officer thereof may verbally notify the men so paraded, to appear, at some future day, not exceeding thirty days from the time of such parade, and such notice shall be sufficient, as it respects the persons present. Notifications may be proved as is provided in the one hundred and twelfth section.

Time of trainings,

——for elections,

——on sudden emergencies.

Verbal notice on parade.

Orders for reviews, &c. when issued. Act of March 1840, § 24.

SEC. 90. All orders for review and inspection shall be issued, ten days at least, previous to the second Thursday in September, and all commanding officers of companies may, on parade, read brigade or regimental orders, and notify the soldiers of their several commands to appear, as specified in said brigade or regimental order, for the purposes therein contained, which notice shall be a sufficient warning.

Company without officers, how notified.

SEC. 91. Whenever any company shall be without commissioned officers, the commanding officer of the regiment or battalion, to which such company belongs, or the officer detailed by him to discipline the same, as provided in the twenty-fifth section, shall, in writing,

order any non-commissioned officers, or privates, to notify the persons liable to do duty in such company, to appear for any duty required by law, at the time and place mentioned in such order; and if any non-commissioned officer or private, so ordered, shall refuse or neglect to notify as aforesaid, he shall incur the penalty provided in such case, by the one hundredth section.

Penalty for refusing to notify.

SEC. 92. The adjutant general shall furnish blank orders, for the commanding officers of companies, to order their non-commissioned officers and privates, to notify their men to attend all the inspections, trainings, reviews, and elections of officers, which may be ordered; also blank notifications or orders to be left with the men.

Adjutant general to furnish blank orders, &c.

SEC. 93. The clerk shall record, in the orderly book, all company orders and notifications; but the same shall not be necessary to the recovery of any penalty.

Orders and notifications to be recorded by clerk.

EXCUSES.

SEC. 94. All excuses, for the non-appearance of any non-commissioned officer or private, shall be made to the commanding officer of his company, within twenty days after any training or other military duty, from which he shall have been absent; and on the delinquent's producing satisfactory evidence of his inability to appear, his commanding officer may excuse him; and no commanding officer shall receive any excuse for non-appearance, after the expiration of the said twenty days. No excuse shall avail such non-commissioned officer or private, on any prosecution for the recovery of any fine or forfeiture, unless proved to have been made to the commanding officer, before the expiration of the twenty days, as aforesaid, or unless said delinquent shall satisfy the court or justice, before whom the case may be tried, that it was not in his power to make such excuse, within twenty days, as aforesaid. All commanding officers shall inform their clerks of any excuses for non-appearance, which they may allow.

Excuses, when to be made, &c.

Clerks to be informed of excuses.

SEC. 95. No commanding officers of companies shall receive any excuses, for any deficiencies of equipment; and every commanding officer of a company, who shall, at any time, excuse any person under his command, for any deficiency, or, after the expiration of the time allowed, for unnecessary absence or neglect, shall be liable to be tried by a court martial.

Deficiencies of equipments, not to be excused.

Penalty.

[Section 96, of the twelfth chapter of the Revised Statutes, repealed by act of March 24, 1840.]

Who may excuse in companies without officers.

SEC. 97. Any officer, detailed to train and discipline any company without officers, according to the provisions of the twenty-fifth section, shall have the same power, as the commanding officer of a company, to excuse absences of the non-commissioned officers and privates of the said company.

FINES AND PENALTIES.

Fines for unnecessary absence. Act of March 1840, § 25.

SEC. 98. Every non-commissioned officer, musician, and private, who shall unnecessarily neglect to appear on the days and at the time and place appointed for such duty, agreeably to the provisions of the seventy-sixth and seventy-eighth sections, shall forfeit and pay the sums hereinafter mentioned:

For unnecessarily neglecting to appear at inspection on the last Wednesday in May, or at any company training, or inspection and review, his annual pay and four dollars for each and every day of such neglect; and for neglecting to appear at any meeting for the election of officers, one dollar.

13 Mass. 433.

Act of March, 1840, § 26, 27, 28.

For unnecessarily neglecting to appear, when ordered, or disobeying any order, in case of any tumult, riot, or other cause, as provided in the one hundred and thirty-fourth, one hundred and thirty-fifth, and one hundred and thirty-sixth sections, or advising any other person to do the like, fifty dollars.

Fines for deficiencies in equipments.

SEC. 99. Every non-commissioned officer or private, who shall appear at any inspection on the last Wednesday in May, or at any company training, or at any inspection and review, whose equipments are deficient, or of a bad quality, shall forfeit and pay the sums hereinafter mentioned, for each of the following articles deficient, of a bad quality, or in bad condition:

A musket, a bayonet, or belt, an iron or steel ramrod, either or all of them, one dollar.

A cartridge box and twenty-four cartridges, suited to the bore of his musket, and containing a proper quantity of good powder and ball, and a serviceable knapsack, either or all of them, thirty cents; provided, nevertheless, that the ball cartridges may be produced and kept, according to the provisions of the eighty-third section; and the knapsacks may be dispensed with at company trainings.

Two spare flints, a priming wire and brush, either or all of them, twenty cents; provided, that none of the

above forfeitures shall be incurred by any private, in a rifle company, who appears with a good rifle and powder horn, knapsack, shot pouch, and a quarter of a pound of powder, and twenty balls suited to the bore of his rifle.

In any company raised at large, for deficiency or bad quality of the uniform of the company, two dollars.

In any company of calvary, for deficiency of a sword or sabre, belt and pistols, all or either of them, one dollar.

Of any other article of equipment, fifty cents.

In any company of artillery, for deficiency of a sword and belt, all or either of them, one dollar.

Of any other article of equipment, thirty cents.

In a company of riflemen, for a deficiency of a rifle, and a sufficient ramrod, both or either of them, one dollar.

Of any other article of equipment, fifty cents.

Penalties for neglects and offences.

SEC. 100. Every non-commissioned officer and soldier, guilty of the several neglects and offences hereinafter mentioned, shall forfeit any pay the sums, severally prescribed for each offence or neglect, besides any other penalties thereto annexed:

Quitting guard, &c. 5 Pick. 189.

For quitting his guard, section, platoon, or company, not less than two nor more than ten dollars.

Discharging musket, &c.

For discharging his musket, rifle, or pistol, when going to, returning from, or upon, parade, contrary to the provisions of the eighty-third section, not less than five nor more than twenty dollars.

Refusing to warn. 19 Pick. 134.

For refusing or neglecting to give notice or warning when ordered by the commanding officer of his company, contrary to the provisions of the eighty-eighth section, not less than twenty nor more than one hundred dollars.

Refusing to warn in company without officers.

For refusing or neglecting to give notice or warning in a company without officers, when ordered by the commanding officer of the regiment or battalion, or the officer detailed to command the company, according to the provisions of the twenty-fifth and ninety-first sections, not less than twenty nor more than one hundred dollars.

Loading with ball, &c. on parade, &c.

For loading his arms upon parade with ball, slug or shot, or coming upon parade with them so loaded, contrary to the provisions of the eighty-third section, not less than five nor more than twenty dollars.

Refusing to act as clerk.

For refusing to perform the duties of clerk, when re-

quired according to the provisions of the twenty-sixth section, not less than ten nor more than twenty dollars.

Contempt, disorderly conduct, &c.

For behaving with contempt to an officer, or conducting in a disorderly manner, or exciting or joining in any tumult or riot, or being guilty of any other unmilitary conduct, disobedience of orders, or neglect of duty, when under arms or on duty, not less than five nor more than twenty dollars.

When persons, may be put under guard.

For any of the offences mentioned in the preceding paragraph, any non-commissioned officer or private, guilty thereof, may be put under guard by the commanding officer of the company, regiment, or of the field, and so kept for a longer or shorter time, not exceeding the time, when his company is dismissed from duty, for the day; and any non-commissioned officer, for any offence mentioned in this chapter, or any disobedience of orders, or unmilitary conduct, may be reduced to the ranks by the commanding officer of his regiment or battalion, with the advice of the commanding officer of his company, or without such advice, if the disobedience or unmilitary conduct occur during a regimental or battalion parade, besides in all such cases, incurring the fine here mentioned.

Non-commissioned officer may be reduced to the ranks.

Fines of officers.

SEC. 101. Officers shall be liable to the following fines:

Penalty for neglecting to make returns.

The penalty for neglecting to make the returns as provided for in the thirty-first and thirty-second sections shall be as follows:

Penalties of commanders of companies, &c. Act of April 20. 1837, § 5.

Every captain, or commanding officer of a company, who shall neglect to make returns, for each instance of such neglect, ten dollars.

Every commanding officer of a regiment or separate battalion, who shall neglect to make returns, for each instance of such neglect, twenty-five dollars.

Every commanding officer of a brigade, who shall neglect to make returns, for each instance of such neglect, fifty dollars.

Every commanding officer of a division, who shall neglect to make returns, for each instance of such neglect, seventy-five dollars.

Every brigade major and inspector who shall neglect to make returns, for each instance of such neglect, fifty dollars.

Fines, &c. how prosecuted for, &c.

The above fines and forfeitures to be prosecuted for by the officer to whom the respective returns should be made, in any court of competent jurisdiction, and paid into the treasury of the Commonwealth.

Any officer, who shall parade his company on the days of elections, contrary to the provisions of the eighty-fifth section, besides being liable to a court martial, shall forfeit and pay not less than fifty nor more than three hundred dollars. For ordering parade on days of election.

Any officer, who shall exercise his power and authority as an officer of the militia, after accepting an appointment in the army of the United States, contrary to the provisions of the seventy-second section, shall forfeit a sum not exceeding three hundred dollars. Acting as an officer after accepting commission in the army.

Any officer, who shall disobey any order or precept, in case of tumults, riots, and other causes, as provided in the one hundred and thirty-fourth, one hundred and thirty-fifth and one hundred and thirty-sixth sections, shall forfeit not exceeding five hundred dollars, besides being cashiered and liable to an imprisonment, as therein provided. Disobeying any order in case of tumults, &c.

Any officer, who shall refuse to make or certify, or shall falsely certify, any lists of persons, entitled to the compensation provided in the one hundred and twenty-fifth section, shall forfeit not less than twenty nor more than one hundred dollars. Refusing to certify, &c

Any fine, not exceeding two hundred dollars, may be inflicted on any officer, by sentence of a general or division court martial, as a part of [or] the whole of such sentence. Fines by court martial.

SEC. 102. Every master, deputy master, and musician, of a brigade band, for absence from military duty or neglect thereof, disobedience of orders, disorderly, or other unmilitary conduct, shall forfeit not less than ten nor more than twenty dollars. Neglect or misconduct of band.

All musicians, on duty with any company, whether hired or enlisted, while actually on duty, shall be subject to the same commands, and liable to the same duties and penalties, as other soldiers of the company. Hired musicians subject to commands and penalties like soldiers.

SEC. 103. When information is required for the purpose of enrolling men liable to enrolment: Giving false information to avoid enrolment.

Every person, who shall be liable to enrolment, and shall give his name falsely, or refuse to give it, contrary to the provisions of the sixth section, shall forfeit and pay twelve dollars. Act of March 1840, § 2.

Every keeper of a tavern or boarding house, and every master and mistress of a house, refusing to give information respecting their inmates, contrary to the provisions of the sixth section, shall forfeit and pay twenty dollars. —by householders. Act of March 1840, § 2.

Fines of citizens.

SEC. 104. The persons hereafter named shall incur the same fines as non-commissioned officers and privates, in like cases:

Absence, &c. of soldiers in companies without officers.

Non-commissioned officers and privates of companies without officers, when ordered out to be trained and disciplined, as provided in the twenty-fifth and one hundred and thirty-first sections, shall be liable, for absence, deficiency, misconduct or neglect of duty, to the fines prescribed for similar offences in companies with officers.

Fines of selectmen for neglect, &c.

SEC. 105. The mayor and aldermen of any city, the selectmen, assessors and clerks of any town, who shall refuse or neglect to perform the duties mentioned in the sixth, seventh, and one hundred and twenty-ninth sections, shall each of them individually, forfeit and pay not more than five hundred, nor less than twenty dollars, for each and every offence. The selectmen of any town, who shall refuse or neglect to perform the duties hereinafter mentioned, shall, each of them, individually forfeit the sums following, to wit:

—to examine lists and draw onlers. Act of March 1840, § 10.

For neglect or refusal to examine any list of persons, entitled to compensation for militia duty, or to draw an order for such compensation on the treasurer of the town, according to the provisions of the one hundred and twenty-fifth section, not less than twenty nor more than one hundred dollars.

For appointing town meeting on days of inspection.

For appointing any town meeting for elections on the last Wednesday in May, or any day on which the militia may hereafter be required by statute to do military duty, a sum not exceeding one hundred dollars.

Fines of towns.

SEC. 106. Whenever the selectmen of any town shall neglect or refuse to perform the duties hereinafter mentioned, the said town shall forfeit and pay the following sums:

Neglect to provide supplies, &c.

For refusal or neglect to provide and furnish necessary supplies, equipage and camp utensils, as required by the one hundred and thirty-third section, not less than two hundred nor more than five hundred dollars.

—to keep powder, when required.

For neglect to provide and keep the quantity of powder, prescribed by the forty-sixth section, when required as therein provided, not less than twenty nor more than five hundred dollars.

Fines for having in possession without right, certain articles belong-

SEC. 107. Any person who shall purchase, retain or have in his custody or possession, without right, any intrenching tools, implements, arms, equipments or ammunition, the property of the Commonwealth, marked,

branded, or known to him to be such, shall pay a fine not exceeding ten times the value of the article. ing to the Commonwealth.

PROSECUTIONS FOR FINES.

SEC. 108. The fines mentioned in this section shall be recovered by indictment, or by an action on the case, by any person whatever, one half of the sum recovered in such action to be to the use of the Commonwealth, and one half to the use of the prosecutor, viz: Fines prosecuted by indictment or action on the case.

Fines under the one hundred and first section, except fines imposed by courts martial, and the fines mentioned in the second paragraph of the one hundred and first section.

Fines under the one hundred and fifth section, except the fines for neglect or refusal of mayor and aldermen, selectmen, assessors, and town clerks, to perform the duties named in the sixth, seventh, and one hundred and twenty ninth sections. Act of March 18 4

Fines under the one hundred and sixth section.

Fines under the one hundred and seventh section.

SEC. 109. The fines mentioned in this section shall be recovered by the commanding officer of the regiment or battalion, to which the company of the delinquent belongs, either by complaint or action on the case, to the use of such battalion or regiment: Fines, recovered by complaint or action on the case, by commander of regiment, &c.

Fines under the one hundredth section, for refusing to give notice or warning in any company without commissioned officers, when ordered by such commanding officer, or the officer detailed by him to command the same, under the provisions of the twenty-fifth section. For refusal to give notice in company without officers.

Fines under the one hundredth section, incurred by any non-commissioned officer or private, for quitting his guard, section, platoon or company, may be recovered by the commanding officer of the regiment, or by the clerk of the company, when the company is ordered to parade with the regiment, but at all other parades, by the clerk of the company only. For quitting platoon, on parade.

SEC. 110. Fines under the one hundredth section, for refusals to perform the duties of clerk, according to the provisions of the twenty-sixth section, shall be recovered by the commanding officer of the company, to which the delinquent belongs, by complaint before any police or justices' court, or any justice of the peace, to the use of the company. Fines for refusal to perform the duties of clerk.

—incurred by members of brigade and

Fines under the one hundred and second section, incurred by members of the brigade band, shall be prosecuted by the brigade major, by complaint, as before provided, to the use of the Commonwealth.

—by sentence of court martial. Costs against judge advocate to be paid by county treasurer.

Fines by sentence of court martial, as provided in the one hundred and first section, shall be prosecuted by the judge advocate, or person appointed to act as such at the court martial, by an action on the case, to the use of the Commonwealth; and if any judgment for costs shall be rendered against any judge advocate in such case, the officer to whom the execution upon such judgment is delivered, shall demand payment of the execution of the treasurer of the county, in which such judgment is rendered, and the said treasurer shall pay the same, and it shall be allowed to said county, in the settlement of said treasurer's account with the Commonwealth.

Fines in company without officers.

Sec. 111. All fines for absences, defaults, neglects or offences, mentioned in the ninety-eighth, ninety-ninth, and one hundredth sections, when incurred by any non-commissioned officer or private, in any company without officers, (except the fine for refusing to give notice, when ordered by the commanding officer of a regiment,) shall, on complaint of the officer detailed, as provided in the twenty-fifth section, to train and discipline such company, be prosecuted, substantially, in the like manner, as they are to be prosecuted by the clerks, in the following section: one half of the amount recovered to be to the use of the regiment, and the other half to the use of the officer; and the officer so prosecuting shall be a competent witness in the case.

Fines for absence or disobedience in case of riot, &c.

By musicians.

For giving false information.

By parents, guardians or masters.

All fines not otherwise provided for to be recovered by clerk.

Sec. 112. All fines incurred by any soldier, not appearing when ordered, or disobeying any order, in case of riot, tumult, or other cause, specified in the one hundred and thirty-fourth, one hundred and thirty-fifth, or one hundred and thirty-sixth sections, or advising any other person to do the like; by musicians in any company, under the one hundred and second section; by persons giving false information, or refusing to give information, with regard to themselves or other persons liable to be enrolled in the militia, under the one hundred and third section; and all fines and forfeitures, incurred by the non-commissioned officers and privates of any company, under the provisions of this chapter,

which are not otherwise provided for, shall be prosecuted for and recovered by the clerk of such company, or any person appointed to perform the duties of clerk, as provided in this chapter.

Information, when and where filed.

The clerk of each company, after the expiration of twenty days, and within forty days, after the day of any parade or election of officers, shall make and subscribe an information against the offending non-commissioned officers or privates, who have not been excused by the commanding officer of the company, according to the provisions of the ninety-fourth section, or who have not, within the twenty days aforesaid, paid to such clerk the fines or forfeitures, which they may have incurred; which information shall be left with some justice of the peace, or filed in some police or justices' court, (as the case may be) in the county, in which such offending non-commissioned officer or private resides; and the information shall be in substance as follows:

Form of information.

To A. B. Esq., justice of the peace, within and for the county of , or to the justices of the justices' court within and for the county of , or to the justice of the police court, within and for (as the case may be):

I, the subscriber, clerk of the company commanded by , do hereby give information against the following person, (or persons), who, being duly enrolled in said company, and being duly notified to meet with said company, on the day of in the year , (for inspection of arms, company training, inspection or review, or election of officers, as the case may be), was (or were, as the case may be), guilty of the offences and did incur the forfeitures, set against his name, (or their respective names, as the case may be):

Names.	*Offences.*	*Forfeitures.*	*Sums.*
A. B. non-com officer; C. D. private.	For unnecessarily neglecting to appear on said day:	has forfeited	
E. F.	For being deficient of a on said day:	has forfeited	
G. H.	For being on said day guilty of coming on to the parade with his arms loaded:	has forfeited	

I. K.	For unnecessarily discharging his musket, rifle or pistol, (as the case may be), in going to, or returning from, or on, the place of parade, (as the case may be), without the orders of an officer:	has forfeited
L. M.	For leaving his guard, section, platoon, or company, (as the case may be), without the leave of an officer:	has forfeited

(And in the same manner, substantially, all other offences are to be set forth against offending non-commissioned officers and privates):

I, therefore, agreeably to my oath of office, and in compliance with the requisitions of the law in this behalf, request you (or the justices of said court, or the said court, as the case may be), to issue a summons, directed to each of the persons, named in the above information, to appear before you (or the said court, as the case may be) and show cause, if any he has, why it should not be adjudged, that he pay the forfeiture, set against his name, for the offence (or offences) which he is therein alleged to have committed.

Dated at this day of in the year

A. B., clerk of the company commanded by

When summons to be issued. 1 Mass. 443.

And the justice or court, to whom such information is directed, shall file the same, and, when moved thereunto by said clerk, shall, within nine months, and not afterwards, issue a summons to each person, informed against as aforesaid, to be served at least seven days before the time appointed for showing cause.

Form of summons of justice.

The summons, if issued by a justice of the peace, shall be substantially in the following form:

——— *ss.*

[Seal] To the sheriff of said county, or either of his deputies, or either of the constables of the town of in the county aforesaid, greeting:

In the name of the Commonwealth of Massachusetts, you are hereby required to summon C. D. of in the county aforesaid, to appear before me, E. F., one of the justices of the peace for the county aforesaid, at

in , on the day of
at of the clock in the noon, then and there to show cause, if any he has, why judgment should not be rendered, that he has forfeited for [here insert the offence, and the time when and place where it was committed]. Hereof fail not, and make due return of this writ and your doings thereon, unto myself, on or before the said hour of the day of
Dated at aforesaid, the day of in the year

E. F., Justice of the Peace.

If issued from any police or justices' court, the said summons shall be in the following form: —of police or justices' court.

———ss.

The Commonwealth of Massachusetts.

[Seal.] To the sheriff of the county of or either of his deputies, or either of the constables of the town of in said county, greeting:

We command you to summon C. D., of in said county, to appear before our justices of our justices court, (or our justices of our police court as the case may be) to be holden at within and for our on then and there to show cause, if any he has why judgment should not be rendered, that he has forfeited for [here insert the offence and the time and place where it was committed.] Hereof fail not, and have you there this writ, with your doings thereon.

Witness W. S. Esq., at on the day of in the year

T. P., Clerk.

(or, witness my hand and seal at on the day of in the year of our Lord

A. B., Justice of said Court.

as the case may be.)

When the person summoned shall appear, he may plead the general issue, and give any special matter in evidence. General issue may be pleaded.

Upon the trial of such complaint, made by the clerk of a company, it shall be sufficient for the complainant to prove, that he is clerk of the company, and, for this purpose, he shall produce his warrant as a non-commissioned officer, and prove the signature thereto of the colonel or commanding officer of the regiment or battalion, and that at the time of signing such warrant he was reputed to be, and acted as such colonel or command- What is sufficient evidence for the prosecution.

ing officer; and thereupon it shall be presumed that such complainant was appointed a non-commissioned officer, by the captain or commanding officer of such company, and that a legal return of such appointment was made to the colonel or commanding officer of the regiment, until the contrary be shown.

3 Pick. 222. 4 Pick. 66. 5 Pick. 230. 8 Pick. 448.

He shall then show, upon the back of his warrant, a legal certificate of his appointment as clerk, and qualification as such, by taking the oaths required by law; and, for this purpose, he shall prove the signature of the captain or commanding officer of such company, and that he is such captain or commanding officer, by producing his commission as such: but if the clerk be appointed clerk pro tempore, his appointment may be proved by the records of the company.

He shall then produce the roll of the company, and prove that the defendant resided within the limits of the company, that he was enrolled therein, at the time he was notified of such meeting, and that he had been enrolled six months; but if it appear that the defendant came within the bounds of the company within that time, and that he is of sufficient age, it shall be presumed, if nothing to the contrary appear, that he has been enrolled in some other company before, for six months.

He shall then produce the order of the commanding officer of such company, to notify the said meeting or meetings thereof, and prove his signature thereto, and that the defendant was legally notified of the time and place of such meeting or meetings.

If it is required by law, that the order for such military duty shall, in such case, be given by any officer, superior to the commanding officer of a company, then the orders of such superior officer, and all intermediate orders of officers, transmitting the same to the commanding officer of the company, shall be proved, and that the persons, purporting by said orders to be such officers, are such; and for this purpose, it shall be sufficient to produce the transmitted written or printed copies of such orders, and the regimental, or battalion or other last order, transmitting the same to the commanding officer of the company, and to prove the signature of the proper officer to such regimental, battalion, or other last order, transmitting the same, and also to prove that all the officers above mentioned are reputed to be such officers, and act as such.

The absence or offence of the defendant shall then be proved, to show that he is liable to the fine alleged to be incurred by him; and the certificate of the commanding officer of any company, duly signed by a majority of the officers of said company, shall be received as competent evidence of such neglect or refusal to do duty, as is provided in the seventy-sixth and seventy-eighth sections, or any other duty. Act of March 1840, § 25.

Whenever it appears, that any document or paper, above mentioned, cannot be produced, satisfactory secondary evidence thereof shall be received. Secondary evidence, when received.

And upon the hearing of such case, the testimony of the clerk or any other non-commissioned officer or private, who was ordered to notify the whole or any part of the company, shall be sufficient to prove due notice to the defendant, and that he neglected to appear, unless such evidence be invalidated; but the clerk shall be a witness to no other matter. Clerk, &c. may be a witness. 4 Pick. 251.

The certificate of the surgeon of the regiment, that the defendant was unable to perform military duty, at the time of his absence, shall be *prima facie* evidence, that he ought to be excused for a particular absence, if the provisions of the ninety-fourth section have been complied with. Exemptions and excuses for infirmity how proved. 7 Pick. 251. § 94.

The commanding officer of a company may be a witness to prove any fact whatsoever. Commanding officer may be a witness. 11 Pick. 355.

And if such defendant shall make default, or judgment shall be rendered against him, and he neglect, for two days after, to satisfy the same with legal costs, then execution shall be issued therefor; and the execution, issued by a justice of the peace, shall be in substance as follows, but if by a police or justices' court, it shall be so altered as to conform to the summons: Execution when issued.

——— *ss.*

The Commonwealth of Massachusetts.

[Seal.] To the sheriff of said county, or either of his deputies, or either of the constables of the town of , in the same county, greeting: Form of execution.

Whereas, E. L., clerk of the company commanded by , in said county, on the day of , before J. D. Esq, one of our justices of the peace for our county aforesaid, recovered judgment against T. P. of , for the sum of , fine or forfeiture, and costs of prosecution, as to us appears of record, whereof execution remains to be done: We command you, therefore, that of the money of the said T. P., or

of his goods or chattels, within your precinct, at the value thereof in money, you cause to be levied, paid and satisfied, unto the said E. L., the aforesaid sums, being in the whole; and also, that out of the money, goods and chattels of the said T. P, you levy twenty-five cents more for this writ, together with your own fees; and for want of such money, goods or chattels of the said T. P., to be by him shown unto you, or found within your precinct to the acceptance of the said E. L., for satisfying the aforesaid sums, we command you to take the body of the said T. P. and him commit unto our jail in B., and we command the keeper thereof accordingly to receive the said T. P. into our said jail, and him safely to keep, until he pay the full sums above mentioned, with your fees, [or] that he be discharged by the said E. L, or otherwise, by order of law. Hereof fail not, and make return of your doings therein unto our said justice, within twenty days next coming.

Witness our said justice at B. the day of in the year one thousand eight hundred and

J. D., Justice of the Peace.

Amendments of complaint.

And it shall be lawful to amend the complaint or summons, in any stage of the proceedings, without payment of costs; but the defendant shall be allowed an adjournment or continuance of the case, if justice requires it.

When no costs against complainant.

And no clerk shall be liable to pay costs to any defendant, in any case, in which the commanding officer of his company has certified, upon the information of the clerk, his approval of the same.

Appeals when allowed. 1 Mass. 443.

And no appeal shall be allowed from any such judgment, except the forfeiture adjudged exceed ten dollars, exclusive of costs.

Similar complaints by other officers.

Any complaint, by any other officer, shall be prosecuted in the like manner, so far as the same is applicable thereto, the forms being varied accordingly; and he shall prove his authority by producing his commission, and other competent evidence which may be necessary.

Imprisonment on execution.

Sec. 113. No person shall be imprisoned upon any execution, issued upon any complaint and judgment described in the preceding section, for a longer time than six days, but he shall be discharged by the keeper of the jail to which he is committed, at the expiration thereof, and the judgment debtor shall remain liable for the amount of the judgment and the costs of imprisonment; and execution for the whole of the same may be sued

out against the property of such debtor, in due form of law.

SEC. 114. All fines and forfeitures incurred by the members of volunteer companies, may be collected by such persons and disposed of in such manner, for the benefit of said companies, as a majority of the members thereof may determine. Fines of members of vol. companies, how collected, &c. Act of April 20, 1837, § 9.

COURTS MARTIAL.

SEC. 115. All complaints, upon which courts martial are ordered, shall be in writing and signed by the complainant, and shall clearly specify the offence, and the time when and place where it was committed. No court martial, except, &c.

No officer shall be tried by court martial, for any offence committed more than one year before the complaint, unless his absence or other manifest impediment has prevented a complaint within that time. Offences, when to be tried, &c.

SEC. 116. Every officer to be tried by court martial shall be put under arrest, so as to be suspended from the exercise of his office.* Respondent to be put under arrest.

The judge advocate shall deliver to the accused a copy of the charges against him, and a notice of the time and place of trial, ten days at least before the day of trial; and if he shall object, that he has not received the same as aforesaid, and the court shall be satisfied thereof, they shall adjourn, so as to allow the time required to elapse, after the delivery of the notice and copies. Copy of charges to be delivered, &c. If not delivered, court may adjourn.

SEC. 117. Courts martial shall consist of a president, judge advocate, not more than four nor less than three members, present at the organization of the court, and a marshal, and shall be holden between the first day of December and the last day of March, in the day time. Courts martial to consist of president, &c. When held.

There shall be only one general and one division court martial in any one division in one year. How often.

General courts martial shall be appointed, for the trial of all officers above the rank of captain, by the orders of the commander in chief, issued to the divisions, which, in his opinion, can most conveniently furnish members for the same; and he shall appoint a president, not below the rank of brigadier general, and a marshal of said court. General courts martial, how to be appointed, &c.

* For the mode of serving an arrest, and making return, see Maltby on Courts Martial, page 128.

Division courts martial how to be appointed, &c.

Division courts martial shall be appointed for the trial of officers of and under the rank of captain, by the orders of each commanding officer of a division, in his own division, issued to the brigades, regiments, battalions, and companies, which, in his opinion, can most conveniently furnish members for the same; and he shall appoint a president of the rank of colonel or lieutenant colonel and a marshal.

Members, how to be detailed.

Officers shall be detailed, to sit upon courts martial, in manner following: major generals, by the commander in chief, from the general roster; brigadier generals and officers of any divisionary corps, by the commanding officers of divisions, from the division roster; colonels, lieutenant colonels, and majors, and officers of any company attached to a brigade, by the commanding officers of brigades, from the brigade roster; captains and subalterns, by the commanding officers of battalions, regiments, and other separate corps. And whenever it shall appear that any officer detailed, or to be detailed, is or will be, for some sufficient cause, unable to serve on a court martial, the officer detailing him, having satisfactory evidence thereof, shall certify such inability to the officer ordering the court martial, and shall also, at the same time, detail the officer next in rotation on the roster. No senior officer, or superior in rank to the president, shall in any case be detailed.

If any officer detailed is unable to serve.

Returns of members detailed.

The officers ordered to detail members shall make returns, without delay, to the officer appointing the court, who shall transmit the same to the judge advocate.

Judge advocate to attend.

When prevented.

The judge advocate of each division shall attend all general and division courts martial within his division, when ordered; but when he is prevented by any inability or legal impediment, the officer ordering the court martial shall appoint some person to be judge advocate to the same.

If the president does not attend.

If the officer appointed president shall not attend at the opening of the court, the officer highest in rank present shall be president.

If a sufficient number of members do not attend, or cannot serve.

Whenever it is found, that by reason of absence, challenge, or any other cause, the number of members of any general or division court martial, (beside the president,) qualified to act, is less than three, the court shall adjourn for a suitable time, and the president shall forthwith notify the fact to the commanding officer of the division, in which such general or division court

martial is held, and such commanding officer shall himself detail from the division a number of officers of the same rank as those before detailed, sufficient to complete the court.

If no judge advocate or marshal shall attend at the opening of the court, the president shall appoint a judge advocate or marshal, and the same shall be entered upon the record and signed by him. The person acting as judge advocate at the commencement of any trial, shall continue to serve during the trial, notwithstanding the attendance or appointment of any other person afterwards.

If judge advocate or marshal is absent. 11 Pick. 441. Person serving as judge advocate to continue, &c.

Officers on a court martial shall take rank by seniority of commission.

Officers, how to take rank.

The court may adjourn when it appears to them necessary, before any judge advocate appears, and before they are qualified.

The court may adjourn, when 11 Pick. 445.

Sec. 118. Before any court martial shall proceed to the trial of any officer, the judge advocate shall administer to the president, and each of the members, singly, the following oath: *

Members to be sworn.

You, A. B., do swear, that without partiality, favor, fear, prejudice, or hope of reward, you will well and truly try the cause now before you, between the Commonwealth and the person (or persons, if more than one is accused, in the same complaint) to be tried; and you do further swear, that you will not divulge the sentence of this court martial, until it shall be approved or disapproved of, and that you will not, on any account, at any time whatever, discover the vote or opinion of any member, unless required to give evidence thereof, as a witness, by a court of justice in due course of law. So help you God.

President and members' oath.

And the president shall administer to the judge advocate the following oath:

You, A. B., do swear, that you will faithfully and impartially discharge your duties as judge advocate on this occasion, as well to the Commonwealth as to the accused, and that you will not, on any account, at any time whatever, divulge the vote or opinion of any member of this court martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law. So help you God.

Judge advocate's oath.

* If several persons are tried before the same court, the oath must be taken and the witnesses sworn in each case separately.

Challenges, how and when made

No member shall be challenged by the government or the accused, until the president, members and judge advocate are sworn. Only one member shall be challenged at a time, and the challenge shall be in writing, stating the cause of it. The person challenged shall not vote, but the president and other members shall try whether the challenge be good.

Certain causes of challenge, when received.

Any illegality or irregularity, in the detail of any member of the court, shall be good cause of challenge, by either party; but shall be considered as waived, unless the objection to the detail be taken at the time and in the manner aforesaid.

If the defendant is absent, or withdraws.

If the accused shall neglect to appear and defend, or shall refuse to plead, or withdraw in contempt of the court, the court may proceed to trial and judgment, as if he had pleaded not guilty.

Witnesses, how summoned.

All persons, summoned by the judge advocate or any justice of the peace, shall be holden to appear and give evidence, before any court martial, (but the defendant's witnesses shall have their fees first tendered to them,)

Penalty for not appearing.

and the penalties for neglect to appear shall be the same, and the judge advocate may issue a capias, in like manner as in criminal prosecutions. Before the witnesses testify, they shall be sworn by the judge advocate, according to the following form:

Oath of witnesses.

You, A. B., do swear, (or affirm, as the case may be,) that the evidence you shall give, in the cause now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God, (or, this you do under the pains and penalties of perjury, in case the witness shall affirm.)

Evidence of neglect of returns to adjutant general.

Whenever the adjutant general shall be complainant, for neglect or other default in making returns, he shall not be required to be present, and his certificate shall be sufficient *prima facie* evidence that the return was or was not made, and that a copy of any return is true.

Copies and documents, how authenticated.

The judge advocates shall be the certifying officers, to authenticate all copies of papers and documents, used before courts martial, courts of inquiry, or boards of officers, except papers or documents from the adjutant general's office, which shall be certified by him; but copies may also be proved as in other courts.

Proceedings to be in writing.

The statement of the complainant and the defence of the accused, and all motions, arguments and objections to the proceedings, by either party, and the answers thereto, shall be submitted to the court in writing; all

the evidence and proceedings, in and out of the court, and all opinions of the judge advocate, on questions of law arising during the trial, shall be put in writing by him. And after the prosecution and defence shall be concluded, he shall state and sum up the evidence, and give his opinion to the court, upon all matters of law; which opinion, with the judgment, shall also be put in writing by him.

Votes, how taken.

When any question is to be decided, the judge advocate shall receive the vote of each member, beginning with the youngest and proceeding to the eldest. The president shall not vote, and unless two thirds of the members agree that the accused is guilty, he shall be acquitted; and if two thirds of the members shall find him to be guilty, he shall be sentenced to be reprimanded in orders, or to forfeit a sum not exceeding two hundred dollars, or to be dismissed from office, either or all of them, and, in the last case, he may be further adjudged to be disqualified from holding any military office during life or any term of years.

Order to be preserved.

All courts martial are authorized to preserve order during their session; and any person, who shall, in such court, behave in a disorderly or insulting manner, or make any tumult or disturbance, may be arrested by order of said court, and confined not exceeding twenty-four hours, and fined by the court not exceeding five dollars, either or both; and, if the fine be not paid, the judge advocate shall issue a mittimus, forthwith, to commit such person to prison, in the same manner and with the same effect, as upon executions from justices of the peace, in cases of prosecutions for non-payment of other military fines and costs.

Records, how authenticated and transmitted.

The record of the trial and judgment, with the papers used therein, or copies thereof, certified by the judge advocate, shall all be authenticated by his certificate and signature, and sealed up and transmitted by him to the officer who ordered the court, who shall annex thereto his approval or disapproval of the same, and the reasons thereof in writing, and transmit the same, as soon as may be, to the adjutant general's office, to be kept and preserved.

Approval or disapproval of sentence.

Pay roll.

The judge advocate shall also make up and certify the pay roll of the court martial, and transmit the same to the adjutant general's office.

Copies allowed.

The officer ordering the court and the party tried thereat shall be entitled to receive, upon request, from

the adjutant general, a copy of the record; the party tried paying a reasonable sum for his copy.

Judgment of disqualification may be reversed.

The judgment of disqualification may (after approval) be reversed in whole or in part, by the commander in chief, with the advice of the council; but all other parts of the sentence, when approved, shall remain in full force.

What offences may be tried by court martial.

SEC. 119. Every commissioned officer shall be liable to be tried by a court martial for the following offences:

For unmilitary or unofficer-like conduct when on duty.

For neglect of any of the duties required in this chapter.

For disobedience of orders, or any act contrary to the provisions of this chapter.

For oppression or injury of any under his command.

For any combination or attempt to break, resist or evade the laws, or any lawful orders given to any person whatsoever, or advising any person so to do.

For insult to any superior officer in the exercise of his office.

For presuming to exercise his command while under arrest; in which case, if guilty, he shall be removed from office.

For neglect or refusal, when commanding officer, to order out the troops under his command, when required by law, or ordered by his superior officer.

For excusing, as commanding officer of a company, any person under his command, for deficiency or unnecessary absence, or after the expiration of the time allowed by law.

For neglect or refusal to make a draft or detachment, when legally ordered so to do.

For neglect or refusal to cause prosecutions to be commenced for fines, when it shall be necessary.

For parading the troops under his command on days of election, contrary to the provisions of [the] eighty-fifth section.

For receiving any fee or gratuity for a certificate, as surgeon or surgeon's mate, of inability to do military duty.

For neglect, when detailed, to train and discipline a company, or to make complaint on any neglect or violation of duty, as provided in this chapter, or for any other neglect for which a commanding officer of the company would be liable.

For neglect or refusal to march, to make any draft, or for disobedience to any order in case of rebellion or insurrection, as provided in the one hundred and twenty-ninth, one hundred and thirtieth, one hundred and thirty-first, and one hundred and thirty-second sections; in which case the offender shall be cashiered.

For refusal or neglect to obey any precept or order to call out the militia, or any order issued in obedience thereto, in case of tumult, riot, or other cause, as provided by the one hundred and thirty-fourth, one hundred and thirty-fifth, and one hundred and thirty-sixth sections, or for advising any officer or soldier to do the like; in which cases, the offender shall be cashiered, beside being subject to fine or imprisonment, as provided in said one hundred and thirty-fifth section.

Boards of officers.

SEC. 120. The commander in chief, whenever in his opinion it shall be necessary, may call boards of officers, for settling military questions, or for other purposes relative to good order and discipline.

Courts of inquiry, how organized.

SEC. 121. General and division courts of inquiry shall consist of three officers and the judge advocate of the division, in which they are held; and they may be ordered and organized in the like manner as courts martial, and, under the same regulations, may examine into the nature of any transaction, or any imputation or accusation against any officer, made by an inferior.

Vacancies, how filled.

All vacancies shall be filled as in courts martial.

Oaths.

The judge advocate shall administer, to each of the officers composing a court of inquiry, the following oaths:

—of president and members.

You, A. B., do swear that you will well and truly examine and inquire into the matter now before you, without fear, favor, partiality, prejudice, or hope of reward. So help you God.

After which, the president shall administer to the judge advocate the following oath:

—of judge advocate.

You, A. B., do swear that you will impartially record the proceedings of the court, and the evidence to be given in the case now in hearing. So help you God.

Witnesses.

Witnesses shall be summoned in the same manner, take the same oath, and be examined and cross examined by the parties in the same way, as on trials before courts martial; but the court shall not give their opinions on the merits of the case, unless specially required so to do.

Judge advocates shall attend courts of inquiry in their

Judge advocates to attend.

division, in the same manner as they attend courts martial; and special judge advocates for the court shall be appointed, in the same manner in like cases. All the proceedings therein shall be recorded, and, with the papers and documents used therein, authenticated and transmitted, by the judge advocate, to the officer who ordered the court, in like manner as in the case of courts martial.

No guard, unless, &c.

SEC. 122. No officer, appointing a court martial, court of inquiry, or board of officers, shall order a guard for the same, unless, in his opinion, it be necessary for their protection, and all pay and fees shall be such as are provided in the one hundred and twenty-fourth section.

COMPENSATION.

Compensation.

SEC. 123. There shall be paid, to the officers hereinafter mentioned, the following sums as a compensation for their services:

Salary of adjutant general, &c. R. S. chap. 13, § 26 & 27.

To the adjutant general, fifteen hundred dollars a year, in quarterly payments, which shall be in full compensation for all his services; and he may employ in his office, a clerk or assistant, who shall have a salary of twelve hundred dollars a year, payable quarterly.

Military storekeeper, his salary Resolves of June 16, 1821, and Feb. 18, 1824.

To the military store keeper, in full compensation for his services, a sum not exceeding eight hundred dollars a year, in quarterly payments: provided that he shall give bond to the Commonwealth, in the sum of two thousand dollars, with sufficient sureties to be approved by the governor and council, and upon condition that said military storekeeper shall faithfully account for all public property which may come into his possession during his continuance in office.

Pay of division inspectors &c. Act of April 20, 1837.

To a division inspector, twelve dollars annually; to a brigade major inspector, twenty-five dollars annually; to the adjutant of a regiment or battalion of cavalry, artillery, grenadiers, light infantry, or riflemen, twenty-five dollars annually.

Pay of members of courts martial, &c.

SEC. 124. There shall be allowed to all officers composing courts martial, courts of inquiry, and military boards, and witnesses attending before them, five cents for every mile they shall necessarily travel, in going to and returning from the place of trial, and the following sums for each day of their attendance upon the same:

—of president.

To the president of any court martial, court of inquiry, or military board, three dollars.

—of judge advocate.

To the judge advocate of the same, four dollars; to

be in full compensation also for all services of preparing papers before, and making copies after any trial, inquiry or investigation.

To the marshal and other members of such court or board, two dollars. —of marshal and members.

To each witness attending on such court or board, one dollar. —of witnesses.

Fees for subpœnas and service of them shall be the same as in civil cases. Fees.

No allowance shall be made for pay or rations for any military guard, unless such guard is ordered by the officer appointing the court, nor shall the above compensation be made to officers in actual service and receiving pay. No allowance for guard, unless, &c.

Sec. 125. Each and every officer, non-commissioned officer, and soldier of the volunteer militia, shall be entitled to receive five dollars per annum; provided he shall perform all the duties required by the seventy sixth and seventy eighth sections. And the sums to which each officer and soldier may be entitled, shall be paid by the treasurer of the respective cities and towns in which such officers and soldiers may reside; and the sums so paid by the treasurers of the several cities and towns, shall be paid out of the treasury of the Commonwealth. Compensation to officers and soldiers. Act of March 1840, § 14.

It shall be the duty of the commanding officers of all volunteer companies, on or before the first day of November in each year, to make out and certify to the treasurer of each town or city within the limits of which any person belonging to their companies may reside, a list of all persons in their respective companies residing in such town or city, who through the preceding year have performed all the duty required by the seventy sixth and seventy eighth sections, and the individuals whose names are so certified, shall be entitled to receive the sums herein directed to be paid. Commanding officers of volunteer companies to make out a list, &c. Act of March, 1840, § 15.

Sec. 126. If any officer, non-commissioned officer or private, shall be killed, or die of wounds received on military duty, or shall be wounded or otherwise disabled, when on such duty, he, or his widow, child or children, shall receive from the general court just and reasonable relief. Compensation to soldiers or their families when injured or killed.

Sec. 127. The militia, while in actual service, shall receive the same pay and rations as the regular troops of the United States; and the rations shall be valued at twenty cents each. Pay of troops in actual service.

Every non-commissioned officer and private who

Additional pay to uniformed troops.

shall provide himself with an uniform and blanket, when called into service, shall receive, monthly, in addition to his stated pay, as follows: sergeants and musicians, four dollars; corporals and privates, three dollars and seventy-five cents; and if he shall not so provide himself, he shall be allowed, monthly, two dollars and fifty cents. And every non-commissioned officer and private, who shall provide his own arms and equipments required by law, and keep himself so armed and equipped, shall receive therefor the additional sum of fifty cents per month.

——to those without uniform.

To those providing their own arms.

When discharged, how long paid.

When the militia are discharged from actual service, they shall be allowed pay and rations to their respective homes, at the rate of fifteen miles per day.

Pay rolls and claims for compensation, how examined, &c.

SEC. 128. All pay rolls, claims for compensation or allowance, and all military accounts whatever, unless it is otherwise specially provided by law, shall be transmitted to the adjutant general and examined, and if found correct, certified by him. They shall then, unless it is otherwise specially provided by law, be presented to the committee of the legislature, on accounts, for allowance; and all claims and accounts, which shall be allowed by them, shall be paid to the persons to whom they are severally due, or to their order, at the treasury of the Commonwealth. All accounts or demands against the Commonwealth must be presented within two years after the same shall accrue, become due and payable, and not afterwards.

How allowed and paid.

Act of Feb. 9, 1785.

CALLING OUT THE MILITIA IN CASE OF WAR, INVASION, INSURRECTION, TUMULTS OR RIOTS.

Militia, how called out in case of invasion, &c.

SEC. 129. In case of war, invasion, or to prevent invasion, the governor and commander in chief is hereby authorized and required to order out, from time to time, for actual service, by draft or otherwise, as many of the militia as the necessity of the case may demand.

Act of March, 1840, § 5.

The militia, whenever ordered for preparation for actual service, or in actual service, shall be governed and trained according to the laws of the United States and of the Commonwealth.

Act of March, 1840, § 6.

Whenever the militia are thus ordered out for actual service, they shall forthwith be organized into companies, battalions, regiments, brigades and divisions, and officered, as now provided by law: *provided, however*, that if the exigency of the case should require one or more major generals during the recess of the legislature,

the commander in chief may appoint the same. In such case, upon the meeting of the succeeding legislature, the commander in chief shall give notice thereof to both houses of the legislature, which appointment or appointments shall be subject to confirmation or rejection, as is now provided by law.

Act of March, 1840, § 7.

Whenever the militia shall have volunteered, or been drafted and mustered for actual service, as herein specified, the Commonwealth shall furnish arms and equipments for the use of each non-commissioned officer and private, and pay them, until their time of service shall have expired.

Act of March, 1840, § 8.

To carry into full effect the provisions of this section, the order of the commander in chief may be made and directed to the mayor and aldermen of any city, or the selectmen of any town within this Commonwealth. And whenever such order is made and directed as aforesaid, it shall be the duty of the mayor and aldermen, or the selectmen, aforesaid, to appoint a time and place of parade for the militia, in each city or town, and to order them to appear at the time and place, either by leaving a written notice or orally, and then and there proceed to draft as many thereof, or to accept as many volunteers, as is required by the order of the commander in chief; and the mayor and aldermen, or the selectmen, shall notify the commander in chief forthwith that they have performed the aforesaid duty.

Militia, how called out in case of invasion or insurrection.

Whenever any insurrection shall be made or threatened in the State, the commander in chief shall call upon the militia to repel or suppress the same; and he may order out any divisions, brigades, regiments, battalions, or companies; or may order to be detached any parts or companies of the same, or any number of men to be drafted from the same, and may cause officers to be detailed, sufficient with those attached to the troops, to organize the forces; and if such war, invasion, or insurrection, or any imminent danger thereof, in any part of the State, shall be so sudden that the commander in chief cannot be informed, and his orders received and executed, in season to resist or suppress the same, any commanding officer of a division, in such part of the State, may order out his division, or any part thereof, in the same manner as the commander in chief might do; and when any troops are in the field for such purposes, the senior officer of the troops present shall command,

until the commander in chief, or some officer detailed by him, shall take the command.*

Drafts, how made.

SEC. 130. Whenever any draft from the militia shall be ordered, the non-commissioned officers and privates (except so many as shall offer to serve voluntarily,) shall be drafted by lot from the company, and the officers regularly detailed from the roster.

Drafts in companies without officers.

SEC. 131. If any company without officers be ordered to march, or any draft or detachment be ordered therefrom, the commanding officer of the regiment or battalion, to which they are attached, shall detail some officer to command such company, who shall have the same authority to order them to appear, to command them in the field, or to make any draft or detachment therefrom, as the captain of such company would have, and shall be under the same responsibility.

Penalty for officers neglecting to march, or disobeying.

SEC. 132. Every officer, who, when ordered, shall unnecessarily neglect to march to the place of rendezvous, or shall otherwise disobey any lawful order, shall be punished as is provided in such cases, in the one hundred and nineteenth, one hundred and thirty-ninth, or one hundred and fortieth sections; and every militia soldier ordered out, volunteered, detached or drafted, who shall not appear at the time and place to be designated by the mayor and aldermen, or selectmen, as aforesaid, or who shall not have some able bodied and proper substitute, at such time and place, or shall not pay to the mayor and aldermen of such city, or to the selectmen of such town, for the use of the Commonwealth, the sum of seventy-five dollars, within twenty-four hours from such time, shall be taken to be a soldier absent without leave, and dealt with accordingly, as in actual service; and each non-commissioned officer and soldier shall take with him provisions for not less than three days, when so ordered.

Act of March, 1840, § 9.

Selectmen to provide carriages, &c.

SEC. 133. The selectmen of every town, to which any men so ordered out, detached or drafted belong, when required in writing by the commanding officer of any regiment or detachment, shall provide carriages to attend them with further supplies of provisions, and to carry the necessary baggage, and shall provide the necessary camp equipage and utensils, until they are noti-

* By the tenth section, the volunteer or active militia, in all cases, must *first* be ordered into service, in case of war, or invasion, or to prevent invasion,—to suppress riots, or to aid civil officers in the execution of the laws of the Commonwealth.

fied by the commanding officer to desist; and they shall present their accounts, as is provided in the one hundred and twenty-eighth section; and if they shall neglect or refuse to provide the same, or any part thereof, such town shall be liable to the penalty provided in such case, in the one hundred and sixth section; and the officer, to whom any articles above mentioned shall be delivered, shall be responsible that care be taken of the same.

Penalty on towns for neglect.

In case of tumult, riots, mobs, &c. how the militia are to be ordered out. Act of March, 1840, § 27.

SEC. 134. Whenever there shall be, in any county, any tumult, riot, mob, or any body of men acting together by force, with intent to commit any felony, or to offer violence to persons or property, or by force and violence to break and resist the laws of the Commonwealth, or any such tumult, riot or mob shall be threatened, and the fact be made to appear to the commander in chief, or the mayor of any city, or to any court of record sitting in said county, or, if no such court be sitting therein, then to any justice, of any such court, or if no such justice be within the county then to the sheriff thereof, the commander in chief may issue his order, or such mayor or such court, justice or sheriff may issue his precept, directed to any commanding officer of any division, brigade, regiment, battalion or corps, to order his command, or any part thereof, (describing the kind and number of troops,) to appear at a time and place therein specified, to aid the civil authority in suppressing such violence, and supporting the laws; which precept, if issued by a court, shall be in substance as follows:

——— ss.

Commonwealth of Massachusetts.

Form of precept.

L. S.

To { *insert the officer's title.* } A. B. commanding { *insert his command.* }

Whereas it has been made to appear to our justices of our , now holden at , within and for the county of , that *(here state one or more of the causes above mentioned,)* in our county of , and that military force is necessary to aid the civil authority in suppressing the same; now, therefore, we command you that you cause, *(here state the number and kind of troops required)* armed, equipped, and with ammunition, as the law directs, and with proper officers, either attached to the troops, or detailed by you, to parade at , on , then and there to obey such

orders as may be given them, according to law. Hereof fail not at your peril; and have you there this writ, with your doings returned thereon.

Witness, L. S., Esq, at , on the day of , in the year C. D., Clerk.

And if the same be issued by any mayor, justice, or sheriff, it shall be under his hand and seal, and otherwise varied to suit the circumstances of the case.

Penalty of officers, for disobeying.

Act of March, 1840, § 28.

SEC. 135. The officer, to whom the order of the commander in chief, or such precept shall be directed, shall forthwith order the troops, therein mentioned, to parade at the time and place appointed; and if he shall refuse or neglect to obey such order or precept, or if any officer shall neglect or refuse to obey an order, issued in pursuance thereof, he shall be cashiered, as provided in the one hundred and nineteenth section, and be further punished by a fine, as provided in such case, in the one hundred and first section, or by imprisonment not exceeding six months as a court martial may sentence. And any non-commissioned officer, or soldier, who shall neglect or refuse to appear at the place of parade, to obey any order issued in such case, or any person, who shall advise or endeavor to persuade any officer or soldier, to refuse or neglect to appear at such place or to obey such order, shall suffer the penalty provided in such case, in the ninety-eighth section.

—of soldiers and others.

Troops to appear at rendezvous, and obey, &c.

SEC. 136. Such troops shall appear at the time and place appointed, armed and equipped and with ammunition, as for inspection of arms, and shall obey and execute such orders, as they may then and there receive, according to law.

RULES AND ARTICLES FOR GOVERNING THE TROOPS OF THE COMMONWEALTH, AND THE MILITIA IN ACTUAL SERVICE.

Who shall be taken to be soldiers.

SEC. 137. The following rules and articles are established and declared to be in force, for governing all the troops and militia of the Commonwealth, in actual service, in field, camp or garrison. All suttlers and retainers to an army, all drivers, conductors, and all persons receiving pay or hire for any services, in or with the troops or militia, while they are in actual service in the field, camp or garrison, shall be taken to be soldiers, and governed by these rules and articles.

Offences punished by death, or, &c.

SEC. 138. The offenders described in this section shall suffer death, or such other punishment, as may be

inflicted upon them, by sentence of a court martial, according to the nature of the offence:

Art. i. Any officer or soldier, who shall begin, excite, cause or join in any meeting or sedition in any company, regiment, party, post, detachment, guard or body of soldiers, in the service of the Commonwealth. Sedition.

Art. ii. Any officer or soldier, who, being present at, or knowing any meeting or sedition, does not use his utmost endeavors to suppress the same, or, knowing of any intended meeting or sedition, does not give information thereof to his commanding officer. Not suppressing sedition, &c.

Art. iii. Any officer or soldier, who shall desert.

Art. iv. Any officer or soldier, who shall advise any other officer or soldier to desert. Advising desertion.

Art v. Any officer or soldier, who shall misbehave himself before an enemy, run away, or shamefully abandon any fort, post or guard, or speak or do any thing to induce others to do the like at such time. Misbehaving before an enemy, &c.

Art. vi. Any officer or soldier, who shall abandon his post or colors, to plunder. Abandoning post or colors to plunder.

Art. vii. Any officer or soldier, who shall make known the watchword to any person not entitled to receive it, according to the rules and discipline of war; or who shall give a parol or watchword, different from what he has received. Making known or falsifying the watchword.

Art. viii. Any officer or soldier, who shall force a safeguard. Forcing a safeguard.

Art. ix. Any officer or soldier, who shall knowingly harbor or protect an enemy, or relieve them with money, victuals, arms or ammunition. Harboring or relieving an enemy.

Art. x. Any officer or soldier, who shall directly or indirectly hold correspondence with, or give intelligence to the enemy. Corresponding with an enemy.

Art xi. Any officers or soldiers, who shall compel the commander of any garrison, post, fortress or guard, to surrender or abandon it. Compelling commander to surrender.

Art. xii. No person shall be sentenced to death, except by a general court martial, and in cases expressly mentioned in the foregoing articles. No sentence of death except by court martial.

Sec. 139. The offenders described in this section, shall be cashiered, in addition to any other punishment which may be lawfully inflicted: Offences of officers punished by cashiering.

Art. xiii. Any officer, who shall use traitorous or contemptuous words, against the authority and government of the United States, or the authority, government, or legislature of the Commonwealth. Using traitorous or contemptuous expressions.

Neglecting to march, &c.

Art. xiv. Any officer, who shall refuse or neglect to march to the place of rendezvous, to make any draft, or disobey any lawful order, in case of war, invasion or insurrection, as provided in the one hundred and twenty-ninth, one hundred and thirtieth, one hundred and thirty-first, or one hundred and thirty-second sections.

Disobedience of orders.

Art. xv. Any officer, who shall refuse or neglect to obey any precept or order to call out the militia, or any order issued in obedience to such order, contrary to the provisions of the one hundred and thirty-fourth, one hundred and thirty-fifth, or one hundred and [~~thirty~~] sixth sections, or shall advise or persuade any other officer or soldier to do the like.

Provocation to duel

Art. xvi. Any officer, who shall use any reproach or provocation to another, in speech, gesture, or writing, to induce him to fight a duel.

Giving or accepting a challenge.

Art. xvii. Any officer, who shall give or send a challenge to any officer or soldier, to fight a duel, or accept any such challenge, when sent to himself, or who is a second in a duel, or promoter or carrier of a challenge.

Upbraiding for not challenging, &c.

Art. xviii. Any officer, who shall upbraid another for not sending, or for refusing a challenge.

Suffering a person to pass a guard to fight a duel or not arresting persons about to fight.

Art. xix. Any officer, commanding a guard, who shall knowingly and willingly suffer any person to pass the same, in order to fight a duel, or any officer, knowing or believing, or having reason to believe, any challenge to be given or accepted, carried or promoted, by any officer or soldier under his command, shall not immediately arrest and bring him for trial.

Drunkenness on duty.

Art. xx. Any officer found drunk on his guard or other duty.

Escaping from arrest.

Art xxi. Any officer under arrest, who shall leave his confinement, before he is set at liberty by his commanding or other superior officer, or the officer who confined him.

Behaving scandalously.

Art. xxii. Any officer convicted of behaving in a scandalous or infamous manner.

Embezzling or committing any fraud.

Art. xxiii. Any officer, store keeper, or commissary, embezzling or committing any fraud, concerning any property of the Commonwealth, or of any officer or soldier, besides being criminally liable for the same.

Wasting or selling stores.

Art. xxiv. Any officer selling, or designedly, or through neglect, wasting, the ammunition, military stores, implements or other property of the Commonwealth, in his care or possession.

Not deliver-

Art. xxv. Any officer, who shall refuse to deliver

over any other officer or soldier to the civil authority, or who shall shelter or conceal any witnesses, contrary to the provisions of the one hundred [*and*] forty-second section. ing offender to civil authority.

Sec. 140. The offenders described in this section, shall suffer such punishment, according to the nature of the offence, as may be inflicted upon them, by sentence of a court martial. Offences punished at discretion of court martial.

Art. xxvi. Any non-commissioned officer or private, guilty of the offences described in the last section, for which an officer would be cashiered. Preceding offences, when committed by soldiers.

Art. xxvii. Any officer or soldier, who shall behave himself with disrespect or contempt towards the commander in chief, the commanding officer of the troops, or his own commanding officer. Disrespect or contempt of commanding officer.

Art. xxviii. Any officer or soldier, who shall disobey the lawful command of his superior officer. Disobedience.

Art. xxix. Any officer or soldier, who shall strike his superior officer, or draw or lift up any weapon against him, or offer any violence against him in the execution of his office. Striking superior officer.

Art. xxx. Any officer or soldier, who shall refuse to obey, or shall resist, or draw or lift any weapon against, or offer any violence to any officer of any rank, (inferior or superior) attempting to part or quell any quarrel in any company, regiment, or body of men, (his own or any other,) or who shall not submit, when arrested by any such officer, in such case, by the authority hereby given. Resisting, &c, any officer who attempts to quell a quarrel.

Art. xxxi. Any officer, commanding in quarters, garrisons, or on a march, who shall not keep good order, and, to the utmost of his power, redress all abuses and disorders, committed by those under his command, or who, upon complaint made to him of any beating, ill treatment, riot or disquieting of any citizens or subjects of the United States, shall omit to use means to punish the offender or offenders, and cause reparation to be made to the party injured, so far as the offenders' pay will go. Not keeping order—redressing abuses—protecting citizens.

Art. xxxii. All non-commissioned officers and privates, found one mile from the camp, fort or post, without leave in writing from the commanding officer. Being one mile from camp, &c.

Art. xxxiii. Any officer or soldier, who shall be out of his camp, post or quarters, without leave from his superior officer. Being absent without leave.

Art. xxxiv. Any non-commissioned officer or private, Not retiring

to quarters at night.

who shall not retire to his quarters or tent, at the beating of the retreat.

Not repairing to rendezvous, unless, &c.

Art. xxxv. Any officer or soldier, who shall not repair, at the time fixed, to the place of parade or exercise, or other rendezvous appointed by the commanding officer, unless prevented by sickness or evident necessity, or who shall go from guard or such place of rendezvous, without leave from his commanding officer, before he is regularly dismissed or relieved.

Sentinel found sleeping, &c.

Art. xxxvi. Any sentinel, who shall be found sleeping on his post, or who shall leave it before he shall be regularly relieved.

Occasioning false alarms.

Art. xxxvii. Any officer or soldier, who shall occasion false alarms in camp, garrison or quarters, by discharging fire-arms, drawing of swords, beating of drums, or by any other means whatsoever.

Leaving platoon, &c.

Art. xxxviii. Any officer or soldier, who, without urgent necessity, or leave of his superior officer, shall leave his platoon, division or guard.

Offering violence to persons bringing provisions.

Art. xxxix. Any officer or soldier, who shall do violence, or offer any insult or abuse to any person, who brings provisions or other necessaries to the camp, garrison or quarters.

Disturbing court martial.

Art. xl. Any person, who shall use menacing words, signs or gestures in presence of a court martial then sitting, or cause any disorder or riot to disturb their proceedings.

Refusing to receive prisoner.

Art. xli. Any officer or non-commissioned officer, commanding a guard or provost marshal, who refuses to receive a prisoner, committed to his charge, by any officer of the forces of this Commonwealth, when a statement of the charge, in writing, signed by such officer, is delivered to him.

Releasing a prisoner.

Art. xlii. Any officer or soldier, releasing a prisoner, without proper authority, or suffering him to escape.

Not reporting prisoners.

Art. lxiii. Every officer or provost marshal, to whom prisoners are committed, who shall not, within twenty-four hours after, or as soon as he shall be released from his guard, notify to his and to their commanding officers, their names and crimes, and the names of the officers who committed them.

Crimes not capital, nor specially enumerated.

Art. xliv. All offenders guilty of crimes not capital, and of disorders and neglects which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles.

Art. xlv. Officers, who shall unnecessarily absent themselves from divine service, or behave indecently or irreverently, at any place of worship, shall, upon judgment of a court martial, be publicly and severely reprimanded by the president. Officers absent from divine service, &c.

Sec. 141. Officers and soldiers shall be subject to the following fines: Fines.

Art. xlvi. Any non-commissioned officer or private, absenting himself from, or behaving indecently and irreverently at, divine worship, not exceeding one dollar, and for each offence after the first, to be confined twenty-four hours in addition thereto. Soldiers absent from divine worship, &c.

Art. xlvii. Any officer, guilty of profane cursing and swearing, for each offence, two dollars. Profane cursing, &c by officers.

Art. xlviii. Any non-commissioned officer or private, guilty of profane cursing and swearing, for each offence not exceeding one dollar. Profane cursing, &c. by soldiers.

Art. xlix. Any fine not exceeding two hundred dollars may be inflicted by a court martial as a part or the whole of the sentence; and so much of the same as cannot be stopped out of the pay of the offender, shall be recovered as provided in the one hundred and tenth section. Fines by court martial.

Art. l. All fines may be stopped out of the pay of the offender; and the field officers of every regiment may appoint some suitable person in the regiment, to receive all fines incurred for any breach of these articles, and may direct the same to be properly applied to the relief of the sick, wounded or needy soldiers of such regiment; and the receiver shall account to such officers for all sums so received. Fines stopped out of pay.

Sec. 142. The following rules shall also be observed in actual service:

Art. li. If any officer shall think himself to be wronged by his colonel, or the commanding officer of his regiment or battalion, and shall, upon due application made to him, be refused redress, he may complain to the commander in chief, or commander of the forces in service, who shall examine the case, and see that justice is done. Officer wronged by colonel.

Art. lii. If any inferior officer or soldier shall think himself to be wronged by his captain, or the commanding officer of his company, he may complain to the commanding officer of his regiment or battalion, who shall convene a regimental court martial, for the purpose of doing justice to the complainant; from which Officer or soldier, wronged by captain

either party may appeal to a general court martial, but if the appeal be vexatious, the party appealing may be punished at the discretion of the court martial.

Public stores secured.

Art. liii. All public stores taken from the enemy shall be secured to the use of the Commonwealth.

Oldest officer to command without regard to corps.

Art. liv. When different corps of foot, or horse and foot, join or do duty together upon marches, guards, or in quarters, or camp, the oldest officer by commission shall command, without respect to corps, and give the orders necessary to the service.

Offenders to be delivered to civil authority.

Art. lv. Whenever any officer or soldier shall be accused of a capital crime, or of having used violence, or committed any offence against the person or property of any citizen or subject of the United States, such as is punishable by the known laws of the United States, or of the state where it is committed, the commanding officer and the officers of every army, detachment, regiment, battalion or company, to which the accused belongs, upon application duly made by or in behalf of the party injured, shall use their utmost endeavors to deliver over the accused to the civil magistrate, and to aid the officers of justice in apprehending and securing the accused, to bring him to trial. And if any commanding officer or any officers shall wilfully neglect or refuse, upon application aforesaid, to deliver over the accused, or to aid the officers of justice, or shall detain, shelter or conceal any witnesses in any case, they shall be punished as is provided in the one hundred and thirty-ninth section.

Property of deceased persons, secured.

Art lvi. When any officer or soldier shall die or be killed in the service of the Commonwealth, his commanding officer shall order some suitable person to secure all his property and effects, and to take an inventory of them in the presence of two commissioned officers, who shall attest the same, and to preserve the said effects and inventory, until they shall be demanded by his legal representative.

Pay and rations.

Art. lvii. The pay and rations of troops in actual service shall be such as are provided by the one hundred and twenty seventh section.

Courts martial, &c.

Sec. 143. Courts martial in actual service shall be ordered and held, and shall proceed in the same manner as the militia courts martial, provided in the one hundred and fifteenth, one hundred and sixteenth, one hundred and seventeenth, one hundred and eighteenth, one hundred and nineteenth, one hundred and twentieth,

one hundred and twenty-first, and one hundred and twenty-second sections, except so far as the same may be repugnant to the following regulations:

Arrests.

Art. lviii. When any officer or soldier shall commit any offence deserving punishment, if an officer he shall be put under arrest, and confined to his quarters, and his sword shall be taken from him by the commanding officer; and if a non-commissioned officer or soldier, he shall be imprisoned, until he can be tried by a court martial, or discharged by proper authority.

Length of imprisonment before trial.

Art. lix. No officer or soldier, under arrest and imprisoned, shall continue in confinement more than eight days, or until a court martial can be conveniently assembled.

Courts martial, by whom ordered

Art lx. A general court martial may be ordered by the general, commanding any separate army in the field, garrison or quarters, as well as by the commander in chief; and a division court martial by a major general, or by a commanding officer of a division, as organized for field service.

Number of members of general court martial.

Art. lxi. A general court martial in actual service, shall consist of not less than thirteen commissioned officers; and the president shall not be the commander in chief, nor the commanding officer of the army, detachment or garrison where the offender shall be tried, nor under the rank of a field officer.

Number of members of division and regimental courts martial.

Art. lxii. Division courts martial shall consist of not less than nine, and regimental courts martial of not less than five, officers, when that number can be conveniently assembled, nor less than three in any case.

Power of regimental courts martial.

Art. lxiii. Regimental courts martial shall not have the power to try commissioned officers, but they shall be tried by general or division courts martial according to their rank; nor shall they inflict any heavier punishment than a fine equal to one month's pay, or than one month's imprisonment.

Post and detachment courts martial.

Art. lxiv. Any officer commanding a fort, castle, quarters, or any body of men, composed of detachments from different regiments, or of independent companies, may assemble courts martial like regimental courts martial, and with the same powers.

Courts martial in particular corps.

Art. lxv. Whenever the matters to be examined shall be peculiar to troops of a particular arm, the courts martial shall be composed as far as possible, of officers of that arm.

Rank of members.

Art. lxvi. No officer below the rank of captain shall sit at the trial of any officer of the rank of field officer.

Time of holding courts martial.

Art. lxvii. No court martial shall sit except between the hours of eight in the morning and three in the afternoon, except in cases which require an immediate example.

Rank in courts martial.

Art. lxviii. Members of courts martial belonging to different corps shall take rank according to seniority.

Judge advocate.

Art. lxix. The judge advocate of the division, in which the offence was committed, or some other judge advocate, or, in their absence, some suitable person, shall be appointed to be judge advocate of the court, by the officer ordering the same.

Oath of president and members.

Art. lxx. The judge advocate shall administer to the president and each member of the court the following oath:

You swear, that you will well and truly try and determine, according to your evidence, the matter now before you between the Commonwealth of Massachusetts and the prisoner to be tried; that you will duly administer justice, according to the rules and articles for governing the troops of the said Commonwealth, without partiality, favor or affection, and, if any doubt shall arise, which is not explained by the said articles, according to your conscience, the best of your understanding, and the custom of war in like cases; that you will not divulge the sentence of the court until it shall be approved by the commanding officer; and that you will not, upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the court martial, unless required by a court of justice, to give evidence as a witness, in due course of law. So help you God.

Oath of judge advocate.

The president shall then administer the following oath to the judge advocate:

You, A. B, do swear, that you will faithfully and impartially discharge your duties on this occasion to the Commonwealth as well as to the accused, and that you will not, upon any account, at any time whatsoever, divulge any vote or opinion of any member of this court martial, unless required by a court of justice, to give evidence thereof as a witness, in due course of law. So help you God.

Witness refusing to appear and testify.

Art. lxxi. All persons, called to give evidence before a court martial, who shall not appear, or shall refuse to testify, without legal excuse, shall be punished at the discretion of such court martial.

Art. lxxii. Witnesses shall be examined upon oath administered by the judge advocate, in the form prescribed by the one hundred and eighteenth section. Oath of witnesses.

Art. lxxiii. Members of a court martial shall vote, beginning with the youngest, and shall give judgment by a majority of voices; but no sentence of death shall be given unless two thirds of the members concur therein. Votes in courts martial, how taken, &c.

Art. lxxiv. No sentence of any court martial shall be carried into execution, until all the proceedings and evidence, documents, papers, and all matters in and concerning the same, be transmitted in the manner provided in the one hundred and eighteenth section, to the commanding officer of the army, station, camp or post, where the court martial is held, and he approve the same and order it to be carried into execution. Proceedings to be transmitted to commanding officer.

Art. lxxv. Whenever a court martial shall sentence an officer to be suspended, it may also suspend his pay and emoluments. Pay may be suspended.

Art. lxxvi. Every officer, having power to order a general court martial, may pardon or mitigate any sentence of the court, except sentence of death and cashiering; and he may suspend the execution of these, until the commander in chief shall be informed thereof; and he, with the advice and consent of the council, shall have power to pardon or mitigate the sentence. Pardon or mitigation of punishment.

Sec. 144. In this chapter, the word soldier shall be construed to include all persons enrolled in the militia, except commissioned officers. Construction of the word "soldier."

Sec. 145. All the provisions of this chapter, concerning the powers and duties of the selectmen of towns, shall be construed to include the mayor and aldermen of any city. Word "selectmen" to include "mayor and aldermen."

GENERAL ORDERS.

RULES AND REGULATIONS

For the government of the Officers of the Militia, as established by former General Orders.

The Commander in Chief, being desirous that there should be greater uniformity and correctness in the mode of conducting elections, punctuality and accuracy in making returns of all kinds, and fidelity and attention in the performance of the other various duties which are required of the officers of the militia, by the laws of the Commonwealth, deems it expedient that the following rules and regulations, including such as have been heretofore announced in General Orders, should be established and promulgated for their government; and they are earnestly enjoined to maturely consider and faithfully observe them.

1. The company vacancies must be filled and the officers elect commissioned and qualified, before any choice is made of field officers for the respective regiments or battalions; and every vacancy in the like manner must be supplied, before any choice is made of brigadier generals for the respective brigades; but if any objection on the above ground is known to exist, it must be made at the time of the election, and previous to the choice. It is recommended that all elections of company officers be ordered previous to the last Wednesday in May, that the returns may show the militia completely officered on the day of annual inspection.

2. In all orders for elections an hour should be fixed, before which no votes are to be received for any candidate; and every legal vote offered is to be received, if presented before a declaration of the choice.

3. That disputes respecting the legality of elections may, as much as possible, be avoided, the commanding officers of companies will carefully revise and correct their *Roll Books* before issuing orders for the election of officers, and submit the same, and not *copies* of them, with proper evidence of the notice given to the electors, to the presiding officer; and every officer who shall preside at the election of any captain or subaltern officer, is required to report, to the major general or commanding officer of the division, within

the bounds of whose command the company may be located, the name of the captain or commanding officer of the respective companies, who shall have neglected this duty.

4. In every practicable instance, a field officer, or staff officer of equal rank, when subaltern officers are to be chosen, should always be appointed to preside at military elections. Although a captain may, by law, preside at meetings for the choice of subalterns, and on special occasions it may be found expedient, still in no case should a captain be appointed to preside at an election of subalterns for his own company.

5. The presiding officer of all elections should first read the order for holding and directing him to preside at the election, and having called upon the oldest officer present to witness the proceedings, he will require the roster of the brigade, regiment or battalion, or the original roll book of the company, as the case may be, to be produced by the person having the legal custody of the same; he will then read over the names of the electors borne on the roster, when the election is for the choice of regimental or battalion field officers, or brigadier generals, or the roll, when for company officers, directing the men, in the latter case, to fall in as they are called; and after reading the order for notifying or warning, and the returns made thereon of the officers, non-commissioned officers or privates, who were directed to give notice to the officers, or warn the company, as the case may be, he will inquire if there is any objection to proceeding in the election, which, being stated, if of any importance, he will carefully note down, and report it with his return of the election.

6. If any officer, or person enrolled, should be present at an election, who had not received proper notice, and who is entitled to vote, the presiding officer will, notwithstanding, receive his ballot; and if any person should be present at an election of regimental or battalion field officers, or a brigadier general, who has received a commission, which would entitle him to vote if he had been properly qualified by taking and subscribing the requisite oaths, they may, at his request, be then administered, and his vote received; and if at the election of company officers, any person should be present subject to enrolment, but who was not borne on the roll, the commanding officer of the company should be required to insert it;—the votes are then to be received, and if for the choice of company officers, from the men in the ranks, as their names are called; and the same course is to be pursued at every ballot, after allowing the men a sufficient time to prepare their votes.

7. A presiding officer at an election, has no right to adjourn the meeting, to give the person chosen to a company office, time to determine, whether he will accept or not.

8. The record of all elections must be signed by the presiding officer,

and by the next highest officer present, who was called upon as a witness of the proceedings, and is to be preserved by the presiding officer, until called for by the Commander in Chief, from which record the return of the election is to be made.

9. All returns of officers elected, and of neglects and refusals to elect, and all remonstrances against such elections, are to be transmitted to the Adjutant General's Office, through the commanding officers of battalions, regiments, brigades and divisions, as soon as practicable.

10. When the commander of a regiment or battalion is informed that objections are made against the legality of the proceedings of an election within his command, and that a remonstrance against the same will probably be presented, he is required to ascertain the truth of the facts existing, and accompany the return of the election, with a statement of the same, with a copy of the record of the proceedings.

11. No officer is to be considered as superseded, by the election of an inferior over him, unless the proceedings are legal, and a commission issued upon the return.

12. When an officer is elected to a higher station, and refuses to accept it, he virtually consents that another shall be put in his place, and has no right to complain of being superseded.

13. But one officer can be superseded by one election, and that is he who, in the regular course of promotion, would have succeeded to the vacant office.

14. A major general, or subordinate officer, has no constitutional or legal right or authority to decide on the legality or illegality of an election of a militia officer.

15. A major general, or subordinate officer, has no constitutional or legal right to institute any court or courts of inquiry, in regard to the validity of any election.

16. When a commission is lost before it reaches the officer to whom it belongs, upon proof of such loss, (or where the mode of it is not known,) upon the certificate of the several officers through whose hands the commission should pass, that the same has never been received by them, a new commission will be issued, marked "duplicate."

17. As great irregularities have followed from the liberty that officers have taken to absent themselves, without leave, for more than a year, from their command; and as still more numerous evils have arisen from the removal of officers from beyond the bounds of their command, to such a distance as to render a discharge of their duties highly inconvenient, if not impracticable,—the Commander in Chief requires all commanders of battalions, regiments and brigades, to report to their major generals, through the proper

officers, all instances of such absence or removal, as soon as they occur; and the major generals will transmit certificates thereof to the Adjutant General, in order that discharges may be granted for all such delinquents, in conformity to the seventy-first section of the militia law.

18. No office that has been abandoned, in the manner above stated, is to be considered as vacant, until the nominal incumbent is discharged.

19. To insure uniformity and harmony in the exercises, movements and evolutions, when companies, battalions, regiments and brigades, which have been separately drilled, are combined for discipline, inspection and review, and to give efficiency to detachments when called into actual service, under the laws of the State or of the United States, it is of the utmost consequence that the regulations which have been prescribed by the laws of the United States for those purposes, should be strictly observed; and a system of tactics having been adopted for the discipline and field exercise of the army, —the corps of cavalry, artillery, light infantry, grenadiers and riflemen, constituting the active militia of Massachusetts, will be governed by the same. The evolutions of the line, and all others which are not provided for in the above named books, will be performed, according to the system of discipline prescribed for the army of the United States.

20. There having been great inattention to the provisions in the militia laws which require returns to be made, after the May inspection, by the commanders of companies, separate battalions, regiments and brigades, and by brigade majors and inspectors, annually; and as it is of the utmost importance that those returns should be accurately and punctually prepared and transmitted,—the Commander in Chief orders, that the commanders of separate battalions and regiments report the names of all such commanders of companies to their respective brigadier generals, and that the brigadier generals report the names of all such battalion and regimental officers to their respective major generals, and that the major generals report the names of all such brigadier generals to the Adjutant General, as shall neglect to make their returns in the manner and at the times prescribed; and that the Adjutant General report the names of all major generals or commanders of divisions to the Commander in Chief, who shall not make their returns to him, on or before the fifteenth day of August, and of such brigade majors and inspectors who shall not make their returns on or before the last day of November, in each year, that such measures may be adopted as the nature of the several cases, and a proper regard to the laws and existing regulations, the character of the militia, and the public good, may demand.

21. Every commanding officer of a divisionary corps is required, by the thirty-first section of the militia law, to make a duplicate return of the state of his company to the Adjutant General, in the month of May; and said

corps will be inspected annually, in the autumn, at such time and place as the respective major generals may think expedient, by the division inspectors, or such other officers as may be detailed for that purpose, who shall make out duplicate returns, comprehending the names of all the men belonging thereto, and of their arms, equipments and ammunition, one of which they shall transmit to their respective major generals, and the other to the Adjutant General, in the month of November.

22. The accounts of division inspectors, brigade majors and inspectors, and adjutants, for the compensation allowed them by the one hundred and twenty-third section of the militia law; and those of the commanders of artillery companies, for the expenses incurred under the forty-third section, for horses employed in drawing field pieces on days of inspection and review, or when ordered out of town, in the manner prescribed on the blanks therefor, are required to be transmitted to the Adjutant and Acting Quarter Master General, on or before the first day of February, annually, to enable him to examine them, and have certified abstracts made out and laid before the Committee of the Legislature on accounts, for allowance. The commanders of artillery companies will also transmit their accounts of all expenditures, made by them, for repairs on the gun houses, gun carriages, harness, or for other purposes, at the time above named.

23. To enable the Adjutant and Acting Quarter Master General to make an estimate of the funds required to be appropriated by the Legislature, for the annual supplies and expenditures for the militia, the commanders of artillery companies will report to him, on or before the first day of February, annually, the repairs required to be made on the gun houses, gun carriages, harness, or other articles belonging thereto, with an estimate of the expense of each; they will also transmit, at the same time, a requisition for such implements and military stores as may be necessary, either to supply deficiencies or for consumption during the year.

24. There has not been sufficient attention paid by the officers and members of the artillery companies to preserve their field pieces, implements and equipments, being often put into the gun house muddy and wet, and left in that condition until again used. They must recollect that the establishment of those corps is very expensive, as the cost of the guns and apparatus amounts to over two thousand dollars, and that the sums annually paid for repairs, supplies and transportation, are considerable, which imposes great responsibility on those in whose custody they are placed; and the commanders are expressly enjoined to cause the guns, carriages, harness, implements, and equipments of all kinds, to be thoroughly cleaned every time they have been used, and especially after the autumnal inspection and review, when it is of the first consequence that the whole of the apparatus should be

put in the best possible order. The harness should be well cleansed and oiled at least twice in the year.

25. As much inconvenience has resulted from the delay, on the part of division, brigade, regimental and battalion field and staff officers, in transmitting orders, commissions, certificates of discharge, blanks, and other papers issued from the office of the Adjutant and Acting Quarter Master General, to the persons for whom they are destined; and neglect in not forwarding to him returns of elections, requests for discharge, and other documents, and in replying to letters written to those officers for information on subjects requiring answers, all those officers are specially called upon to prevent, in future, any cause of complaint, for inattention to this very important part of their duty.

26. To avoid the disappointments which have occurred from neglect, and to silence the numerous yet just complaints of the regimental and company officers, that they cannot obtain the blanks and books required, from their several brigade majors and adjutants, the brigade majors will make requisitions on the Adjutant General, for such blanks and books as are not sent by mail; and to prevent all difficulty in future, the adjutants will make out lists of such as they may find, on careful inquiry, may be required, for their several regiments or battalions, which they will present to their respective brigade majors and inspectors, in the month of December; and the brigade majors and inspectors will forward requisitions to the Adjutant General, in the month of January, annually, in which must be specified the kinds and number of blanks and books desired, when they will be put up in packages, to be delivered to such persons as shall be directed to call and receive them, in the month of February, or at any time thereafter; but at all events, in season to insure a distribution among the adjutants and commanders of companies, as early as the first of April, at farthest; as it is necessary that those for the latter should be received before the orders are issued for the May inspection; and it is their duty to call on the adjutants for them.

The brigade majors and inspectors will also send to the Adjutant General's Office for such additional books and blanks as may at any time be required, and the adjutants will seasonably notify them when an extra quantity may be wanted, so as always to be prepared to supply the regimental and company officers, when called on therefor.

The division inspectors will make requisitions for such books and blanks as may be necessary for their commanders and themselves.

27. The following blanks are transmitted by mail to the major and brigadier generals:—Divisionary Returns, Brigade Returns, Regimental Returns, Company Returns.

28. The following books and blanks are furnished by the Adjutant General, and delivered at his office, on the requisitions of the brigade majors and inspectors:—

Printed Books.—Militia Law; Abstract of Infantry Tactics.

Blank Books.—Roster Books for Divisions and Brigades; Orderly Books for do. and Regiments and Battalions; Company Orderly Books; Company Books of Enrolment.

Blanks.—Election Records; Election Returns; Return of Staff Appointments; Return of Non-Commissioned Appointments; Applications for Discharges; Major Generals' Certificates of Absent Officers; Major Generals' Certificates of Officers removed; Oaths for qualifying Officers; Pay Rolls for Courts Martial; Staff Officers' Accounts; Artillery Accounts; Company Warning Orders; Notifications to Soldiers; Sergeants' Warrants; Corporals' Warrants; Sergeant Majors' Warrants; Quarter Master Sergeants' Warrants; Drum Majors' Warrants; Fife Majors' Warrants; Masters of Brigade Band Warrants; Deputy Masters of do. Warrants; Musicians of Bands Warrants; Company Musicians' Warrants.

29. In making out the battalion, regimental, brigade and division returns, it is necessary that the companies of light infantry, grenadiers and riflemen should be carried out separately, to enable the Adjutant General to make out his annual return to the President of the United States, in conformity to the directions of the Secretary of War, which require that the number and aggregate of each of those corps should be distinctly presented; the annexed form of a return of a division, brigade, regiment or battalion, composed of light infantry, grenadiers and riflemen, has therefore been prepared, and exhibits the manner in which the regimental returns should be filled up; and those of the brigades and divisions will be made out in conformity thereto.

[FORM OF A DIVISION, BRIGADE, REGIMENTAL OR BATTALION RETURN.]

Annual Return of the commanded by **for the year**

Division of Volunteer Militia,

Field Offrs.	Regimental Staff Officers.		Comp'ies of	Comp'y Officers.			Privates in Uniform.	Privates not in Uniform.	Aggregate, including Field, Regimental, Staff and Company Officers and Privates.	Arms, Ammunition, Accoutrements, &c.													
	Commissioned.	Non-Com'd.		Com.	N. Com.					Muskets.	Bayonets.	Cartridges Boxes and Belts.	Bayonet Scabbards and Belts.	Spare Flints.	Priming Wires and Brushes.	Knapsacks.	Ball Cartridges.	Rifles.	Powder Horns.	Pouches.	Loose Balls.	Pounds of Rifle Powder.	Reg. and Battalion Colors.
1 Colonels.			Light Infantry.	Captains.	Sergeants	Drummers, Fifers and Buglers.																	
1 Lieutenant Colonels.			1 Grenadiers.	6	24	6	600	800	1496	600	600	600	600	600	600	600	14,400					2
1 Majors.			1 Riflemen.	18	24	24																	
1 Adjutants.	1	1	6	1	5	4	30	109		64	64	64	64	64	64	64	1536						5
1 Quarter Masters	1			1	4	2	64																2
1 Pay Masters.	1		1	3	5	2	60	20	94														
1 Chaplains.	1																	60	60	1200	60	2	10
1 Surgeons.	1																	60	60	1200	60	2	10
1 Surgeons' Mates	1																						
	1	1 Sergeant Majors.																					
		1 Qr. Master Sergeants.																					
		1 Drum and Fife Majors.																					
1	1	1	6	24	34	10	724	850	1698	664	664	664	724	664	664	664	15 936	60	60	1200	60	2	10

Arms, Ammunition, Accoutrements, &c.																							
Drums.	Fifes.	Buglers.	Militia Laws.	Books of Enrolment	Q. derly Books																		
1	1	1	1	1	1																		
1	1	1	1	1	1																		
5	8	2	10	6	6																		
10	10	4	12	8	8																		

* The several Division and Brigade Inspectors will make their Returns in conformity to the above form, in addition to the items prescribed in the Blank Returns, so as to exhibit the force and condition of the *Light Infantry, Riflemen and Grenadiers, separately.* The Regimental and Battalion Returns must be so made as to represent the number of members, arms, &c. of each company.

Commonwealth of Massachusetts.

COUNCIL CHAMBER, APRIL 17, 1840.

THE Committee on the Militia, to whom was referred the communication of the Adjutant General, concerning the organization of the Militia, having duly examined and considered the same, report the following—

Plan of organization of the volunteer corps of the Militia in Massachusetts, in conformity to the "Act in addition to the several acts concerning the Militia, of March 24th, 1840," and the twelfth chapter of the Revised Statutes.

The present organization to be abolished, all the divisions and brigades, and the regiments and companies of the infantry of the line disbanded, and the officers discharged; and the regiments, battalions and companies of volunteers to be organized into three divisions, six brigades, one regiment and one battalion of cavalry, three regiments and six battalions of artillery, and eleven regiments and three battalions of light infantry, grenadiers and riflemen, as follows:

FIRST DIVISION,

To comprise within its bounds the counties of Suffolk, Norfolk, Plymouth, Bristol, Barnstable, Nantucket and Duke's, and to consist of the first and second brigades.

FIRST BRIGADE. The first brigade to comprise within its bounds the counties of Suffolk and Norfolk, and the town of Hingham, in Plymouth county, and to consist of the following corps:

First Battalion of Artillery, to include the three companies of artillery in Boston.

Second Battalion of Artillery, to include the three companies of artillery in Roxbury, Dorchester and Weymouth.

First Regiment of Light Infantry, to include the companies of light infantry and riflemen in Boston and Chelsea. To this Regiment, the corps of Lancers, in the city of Boston, shall be annexed.

Second Regiment of Light Infantry, to include the companies of light infantry, grenadiers and riflemen in Roxbury, Dorchester, Quincy, Hingham, Randolph and Stoughton.

First Battalion of Light Infantry, to include the companies of light infantry and riflemen in Dedham, Medfield, Medway, Walpole, Bellingham and Needham. To this battalion the company of cavalry in Franklin, and the company of artillery in Wrentham, shall be annexed.

SECOND BRIGADE. The second brigade to comprise within its bounds the counties of Plymouth, (excepting the town of Hingham,) Bristol, Barnstable, Nantucket and Duke's, and to consist of the following corps:

Third Battalion of Artillery, to include the three companies of artillery in Abington, Hanover and Plymouth.

Third Regiment of Light Infantry, to include the companies of light infantry, grenadiers and riflemen in Abington, Plymouth, Pembroke, Hanson, Halifax, W. Bridgewater, N. Bridgewater, Plympton, Middleborough and Wareham.

Second Battalion of Light Infantry, to include the companies of light infantry and riflemen in Attleborough, Dighton, Mansfield, Taunton and Fall River. To this battalion the company of artillery in Norton, shall be annexed.

The Divisionary Corps of Independent Cadets, in the city of Boston, shall be attached to the first division.

SECOND DIVISION,

To comprise within its bounds the counties of Middlesex and Essex, and to consist of the third and fourth brigades.

THIRD BRIGADE. The third brigade to comprise within its bounds the county of Middlesex, and to consist of the following corps:

First Regiment of Artillery, to include the four companies of artillery in Charlestown, Watertown, Lexington and Concord.

Fourth Regiment of Light Infantry, to include the companies of light infantry and riflemen in Charlestown, Cambridge, Concord, Framingham, Malden, South Reading, Holliston and Woburn.

Fifth Regiment of Light Infantry, to include the companies of light infantry and riflemen in Lowell, Pepperell, Townsend, Chelmsford, Marlborough and Westford. To this regiment the company of cavalry in Townsend, and the company of artillery in Groton, shall be annexed.

FOURTH BRIGADE. The fourth brigade to comprise within its bounds the county of Essex, and to consist of the following corps:

First Battalion of Cavalry, to include the two companies of cavalry in Georgetown and Wenham.

Fourth Battalion of Artillery, to include the three companies of artillery in Salem, Lynn and Gloucester.

Fifth Battalion of Artillery, to include the two companies of artillery in Newburyport and Andover.

Sixth Regiment of Light Infantry, to include the companies of light infantry and riflemen in Salem, Lynn, Danvers, Marblehead, Rockport, Beverly and Manchester.

Seventh Regiment of Light Infantry, to include the companies of light infantry and riflemen in Topsfield, Ipswich, Bradford, Haverhill, Boxford and Rowley.

The Divisionary Corps of Cadets, in Salem, shall be attached to the second division.

THIRD DIVISION,

To comprise within its bounds the counties of Worcester, Hampshire, Hampden, Franklin and Berkshire, and to consist of the fifth and sixth brigades.

FIFTH BRIGADE. The fifth brigade to comprise within its bounds the county of Worcester, and consist of the following corps:

Sixth Battalion of Artillery, to include the three companies of artillery in Lancaster, Leominster and Barre.

Eighth Regiment of Light Infantry, to include the companies of light infantry, grenadiers and riflemen in Worcester, Mendon, Milford and Holden. To this regiment the company of artillery in Milford shall be annexed.

Ninth Regiment of Light Infantry, to include the companies of light infantry and riflemen in Ashburnham, Barre, Fitchburg, Leominster, Princeton, Shrewsbury, Templeton and Westminster.

SIXTH BRIGADE. The sixth brigade to comprise within its bounds the counties of Hampshire, Hampden, Franklin and Berkshire, and to consist of the following corps:

First Regiment of Cavalry, to include the four companies in Conway, Coleraine, Chesterfield and Williamsburg.

Second Regiment of Artillery, to include the four companies of artillery in Springfield, Belchertown, Westfield and Monson.

Third Regiment of Artillery, to include the five companies of artillery in Northampton, Northfield, Greenfield, Buckland and Plainfield.

Tenth Regiment of Light Infantry, to include the companies of light infantry and riflemen in West Springfield, Springfield, Ware, East Longmeadow, Brimfield, Blandford, Ludlow and Southampton.

Eleventh Regiment of Light Infantry, to include the companies of light infantry and riflemen in Deerfield, Conway, Coleraine, Leverett, Heath, Sunderland and Montague.

Third Battalion of Light Infantry, to include the companies of light infantry in Adams, Pittsfield and Lanesborough.

As the existing companies of artillery constitute a much larger portion of the whole number of volunteers, than is deemed necessary or expedient to

maintain, it is desirable that at least twenty-two of those companies should be changed into light infantry, or be disbanded, and a request being made for either of those purposes, by any of such companies as may wish to avail thereof, will be favorably received.

And the Committee recommend that His Excellency the Commander in Chief be advised to issue his orders accordingly.

For the Committee,

D. A. SIMMONS.

IN COUNCIL, April 17, 1840.

Report accepted, and the Commander in Chief is advised accordingly.

JOHN P. BIGELOW, *Secretary.*

A true copy—attest.

JOHN P. BIGELOW, *Secretary of the Commonwealth.*

COMMONWEALTH OF MASSACHUSETTS.

HEAD QUARTERS, BOSTON, April 24, 1840.

GENERAL ORDERS. } No. 1. }

The Commander in Chief having approved the foregoing advice of Council, orders, that the same be carried into effect, and that the first, second and third divisions of volunteers be organized without delay.

The officers of the divisions, brigades, regiments and companies, which have been disbanded by said order, are hereby honorably discharged.

The officers in whose possession are the colors of the regiments of the infantry of the line, which have been disbanded, will cause them to be sent to the office of the Adjutant General, who will defray the expense of their transmission.

The drums and fifes, or other musical instruments, belonging to the Commonwealth, in the possession of the standing militia companies that have been disbanded, will be delivered, by the commanders thereof, to the selectmen of the towns, and the mayors of the cities, within which those companies are situated, by whom they will be retained until otherwise ordered, excepting those of the companies in Boston, which must be sent to the State Arsenal in that city.

By order of the Commander in Chief.

H. A. S. DEARBORN, *Adjutant General.*

Commonwealth of Massachusetts.

HEAD QUARTERS, Boston, April 24, 1840.

General Orders.
No. 2.

1. By the "Act in addition to the several Acts concerning the Militia, passed on the 24th of March last, and the general order of this date, which is hereto annexed, a very essential change has been made in the Militia system, and the zealous co-operation of the officers, non-commissioned officers and privates of the volunteer corps, which are to constitute the active military force of the State, is required, and confidently relied upon by the Commander in Chief, to render that force, as efficient in discipline and as respectable in conduct and appearance, as was anticipated by the Legislature, when the liberal measures for accomplishing those important objects were adopted.

2. Colonels Freeman White, of the second regiment of light infantry, in the first brigade and first division; Benjamin Adams, of the fifth regiment of light infantry, in the third brigade and second division, and Charles Kimball, of the ninth regiment of light infantry, in the fifth brigade and third division of the volunteers, will respectively assume the command of those divisions, until a brigadier general has been chosen and commissioned, in each of them.

3. The Act of March 24th, 1840, having increased the number and changed the rank of subalterns in the companies of artillery, light infantry, grenadiers and riflemen, the existing offices are consequently abolished, and the present lieutenants and ensigns in those corps are hereby honorably discharged. The several companies of artillery should therefore forthwith proceed to elect one first and two second lieutenants, each; and the companies of light infantry, grenadiers and riflemen, one first, one second, and one third lieutenant, each, in conformity to the provisions of the seventeenth section of the aforesaid act, which will be the twenty-second section in the new digest of the militia laws, now being printed for distribution to all the officers of the volunteer militia.

4. It being very important that the organization should be early completed, the commanders of divisions will immediately issue the requisite orders for filling all the vacancies of company, battalion, regimental, and brigade

officers; and cause the returns of the officers, which may be chosen, to be forwarded to the Adjutant General as soon as possible.

5. The company returns, required by the general order of the 28th of March last, being indispensably necessary, for carrying fully into effect several very essential provisions of the Militia Laws, such commanders, as have not transmitted them, will hasten to do so.

6. The arms which are to be furnished to the volunteer companies, will be delivered, on the requisition of the commanders, whenever the bond required shall be presented to the Adjutant General, and a certificate from the town clerk, that a suitable armory, or place of deposit for such arms, has been provided by the town, in which such companies are situated, or in some other manner. Blank forms for the bond will be furnished by the Adjutant General to the commanders of companies when applied for. As there is not a sufficient number of sabres, pistols, swords, and rifles, for supplying all the companies of cavalry, artillery and riflemen, they will be distributed by lot, and the remaining companies furnished, whenever the requisite number shall have been received from the United States for that purpose.

By order of the Commander in Chief,

H. A. S. DEARBORN, *Adjutant General.*

Commonwealth of Massachusetts.

HEAD QUARTERS, Boston, April 24, 1840.

General Orders, No. 3.

The following described uniform has been prescribed by the Commander in Chief:

1. STAFF OF THE COMMANDER IN CHIEF.

Adjutant General—The same uniform as that for a brigadier general, excepting that the plume will be white.

Aids-de-Camp—The same as that of the staff of general officers, excepting that the plume will be yellow.

2. MAJOR GENERALS.

Coat—Dark blue, double breasted, two rows of buttons, nine in each row, to be placed by threes, distance between the rows, four inches at top and three at bottom; stand up collar, to meet a hook in front, cuffs two and a half inches deep, and to button with three small buttons at the under seam; pointed cross flaps to the skirts, with four buttons equally distributed; the skirts to reach to the bend of the knee, with buff turn-backs; the bottom of the skirts four inches broad, with a gold star on buff cloth on each skirt; two hip buttons to range with the lower buttons on the breast; collar, cuffs and facings of the skirts, buff cloth; lining buff, buttons guilt, of the patern of those of the United States Army, ornamented with the crest of the arms of the State.

Epaulettes—Gold, with two silver stars on the straps.

Hat—Cocked, without binding, black ribbon on the two front sides, black silk cockade ornamented with a gold loop and a silver spread eagle; tassels gold; plume, white and black, black tip half the length, drooping from an upright stem, eight inches in length.

Trowsers—Dark blue cloth, with a buff stripe down the outer seam, one and a half inch wide, and welted at the edges.

Sword—Straight, gilt hilt; sword knot gold.

Sword-Belt—Black, patent leather; plate, gilt.

Sash—Buff, silk net; gloves, buff.

Spurs—Yellow metal, or gilt.

3. BRIGADIER GENERALS.

Dress—The same as for major generals, excepting that the coat is to have ten buttons placed on the breast in pairs.

Epaulettes—The same, excepting that there shall be one silver star on the straps.

Plume—Red and white, the white tip half the length, drooping.

4. STAFF OF GENERAL OFFICERS.

Uniform—The same as that of their generals, excepting that the coat will be single breasted, with a row of nine buttons placed at equal distances; the buff on the collar to extend four inches, on each side, from the front; the rest of the collar blue, cuffs blue; sash red silk net work.

5. ARTILLERY.

Coat—Dark blue cloth, double breasted, two rows of buttons, ten in each row, at equal distances; distance between the rows four inches at top and two at bottom; standing collar to meet in front with hook and eyes; two loops, four inches long, on each side of the collar, with a small button at the end of each loop, the collar edged all round with red; plain round cuff three inches deep; slashed flap on the sleeve, six and a half inches long and two and a quarter wide at the points, and two inches wide at the narrowest point of the curve,—four loops and four small buttons on the slashed flap, on the sleeve for field and staff officers; for captains, slash four and a half inches long, with three loops and three buttons; subalterns, slash three and a half inches long, two loops and two buttons; slashed flap on the skirt, with four loops and large buttons; the slashed flaps on the sleeves and skirts to be edged with red on the ends and indented edge; two large buttons at the waist,—skirt to extend within three and a half inches of the bend of the knee, red turnbacks and linings: gold shell and flame at the bottom of the skirt; loops on the collar and flaps to be gold lace, half an inch wide,—coat lined with red,—buttons the same as for general officers.

Epaulettes—According to rank and pattern, as hereafter described.

Cap—Black patent leather, seven and a half inches deep, ornament in front gilt cross cannon, and number of the regiment; plume, red cock feathers falling from an upright stem, eight inches long, with a gilt socket; gold cord and tassels.

Sword—According to the pattern, furnished by the United States. *Sword Belt*—White leather, two and a half inches wide, plate gilt, ornamented with cross cannons.

Trowsers—Deep blue cloth, with a red stripe down the outer seam, one and a half inches wide, and welted at the edges.

Spurs—Gilt. *Stock*—Black silk. *Gloves*—White. *Sash*—Crimson silk net, and tied on the left hip.

6. LIGHT INFANTRY.

Dress—The same pattern as for artillery, the edging, turnbacks, stripe on the trowsers, and linings, are to be white; lace, silver; ornament on the skirts, a silver bugle; buttons, spurs, and sword-belt, plated.

Sword—Of the same pattern as that of the artillery, hilt and mounting, silver.

Cap—The same pattern as for artillery, ornament a silver bugle, number of regiment silver; silver cord and tassels. *Plume*—White, tipped with red. *Gloves*—White.

7. RIFLEMEN.

Uniform—The same as for Infantry, except that the color of the cloth for the coat and trowsers is to be green, and the edgings, turnbacks, linings, and stripe on the trowsers, red.

8 GRENADIERS.

Uniform—The same as for Infantry, excepting that the edgings, turnbacks linings, and stripe on the trowsers, buff.

9. CAVALRY.

Dress—The same as for artillery, excepting that the color of the cloth for the coat is to be green, with collar, cuffs, turnbacks, linings, and stripe on the trowsers, red, and the length of the skirts to be what is called *three quarters*; ornament on the skirts, cross sabres.

Cap—Of the same pattern as for artillery; ornament, gilt cross sabres; drooping white horse-hair pompon, with a stripe of red hair to show in front.

Sabre—Of the pattern furnished by the United States.

10. SURGEONS.

Dress—Of the same pattern as that of the field and staff officers of their respective regiments, but the collars, cuffs, turnbacks, and stripe on the trowers of the same color of the coat.

Hat—Cocked, plain, black buttons, and black silk gimp loop, formed like that of general officers, no tassels or other ornament except the cockade and

eagle. Surgeons to have an embroidered button hole on each end of the collar of the coat; but that of surgeons' mate to be without ornament. They may wear a plain blue coat, and round hat, with a black cockade and eagle.

Sword—Small sword; sword belt, black; embroidered button hole; hilt of swords and spurs in the artillery and cavalry to be gilt, and silver in the infantry.

11. CHAPLAINS.

Coat—Plain black cloth. *Hat*—round, with black cockade and eagle. Sword, sword belt, and spurs, the same as for surgeons.

12. BADGES OF DISTINCTION.

Epaulettes—General officers as described. *Colonels*—Gold, bullion half an inch in diameter, three and a half inches long; plain lace strap, ornamented with the crest of the State arms; the number of the regiment within the crescent; crest and number to be silver when the bullion is gold, and gold when the bullion is silver. *Lieutenant Colonels*—The same as the colonel, omitting the crest. *Majors*—The same as the lieutenant colonel, as to shape and size; the strap to be of silver lace when the bullion is gold, and of gold lace when the bullion is silver; the number on the strap to correspond in color with the bullion, the border of the strap to be the same color of the bullion. *Captains*—Plain lace straps and solid crescents; bullion one fourth of an inch in diameter, and two and a half deep; the number of the company on the strap which is to be gold when the bullion is silver, and silver when the bullion is gold. *Subalterns*—The same as the captains, except the bullion is one eighth of an inch in diameter.

All officers of a military rank, to wear an epaulette on each shoulder.

AIGUILLETTES.

Staff Officers—General as well as regimental will be distinguished by aiguillettes. *Aiguillettes of general staff officers*, twisted gold cord with gilt tags, worn on the right shoulder under the epaulette. *Aiguillettes of regimental staff officers*, twisted gold and silver cord with gilt tags, worn as by general staff officers.

13. HORSE FURNITURE FOR GENERALS.

Housings—Of dark blue cloth trimmed with gold lace; to be worn over the saddle, made full, so as to cover the horse's haunches, and fore-hands; two gold stars to denote a major general and one a brigadier general. *Surcingle*, blue web, to be attached to the housings.

GENERAL STAFF OFFICERS.—*Saddle cloth*, dark blue, of sufficient length to cover the saddle and holsters, and one foot ten inches in depth; with an edging of gold lace. *Bridle*, black leather, gilt bits, front and roses yellow; collar yellow. *Holsters*, black leather, with gilt ornaments; stirrups gilt.

OFFICERS OF ARTILLERY, LIGHT INFANTRY AND CAVALRY.—*Saddle cloth*, dark blue, two feet and ten inches in length, and one foot ten in depth, with gold lace and red edging for artillery and cavalry, and silver lace and white edging for infantry. *Bridle*, black leather; gilt bits, stirrups and mountings for artillery and cavalry, and for infantry, plated; red front and roses for artillery, white for infantry, and for cavalry, buff. *Collar*, for artillery red; for infantry white, and cavalry buff. *Holsters*, the same as for general staff officers.

14. UNIFORM OF NON-COMMISSIONED OFFICERS AND PRIVATES.

SERGEANT MAJORS, QUARTERMASTERS, SERGEANTS, DRUM and FIFE MAJORS—the same as established for field officers; except that of the musicians, who will substitute binding for lace; the epaulettes to be of the same pattern as that of subalterns, excepting that yellow and white worsted will be substituted for gold and silver bullion. Aiguillettes on the left shoulder of worsted, the color of the epaulette, with gilt on silver tags, according to the color of the aiguillette. *Cap*, for non-commissioned officers, musicians and privates, of the same pattern designated for the officers with worsted cord and tassels. *Plume*, upright hackle, twelve inches long and of the color of the regimental officers. Coats of the musicians of the artillery and riflemen, red, with blue edgings, turnbacks, linings and stripes on the trowsers; of the infantry, white, with blue edgings, turnbacks, linings and stripes on the trowsers; of the grenadiers, buff, with green edgings, turnbacks, linings and stripe on the trowsers; cavalry, red with green collar, cuffs turn backs, and stripe on the trowsers.

COMPANY, NON-COMMISSIONED OFFICERS AND MUSICIANS.—The skirts of the coats of company, non-commissioned officers and musicians and privates, to extend only within seven inches of the bend of the knee. *Epaulettes*, worsted, of sergeants, corresponding in pattern with those of captains, and of corporals, the pattern of subalterns; privates, worsted straps, with pad and half fringe; the color of the worsted to correspond with that of the officers epaulettes. *Caps*, the same pattern as for officers, worsted cord and tassels, the ornament and number of the regiment to be of the color

of the button of the regiment. *Plumes*, worsted, eight inches long, of the color of those of the officers.

From the first of May to the first of October, the officers, non-commissioned officers, musicians, and privates may wear plain white linen or cotton trowsers.

15. BRIGADE BANDS,

Will wear the uniform prescribed for the company musicians in the artillery, exeepting that the collar, cuffs, turnbacks and stripe on the trowsers will be of light blue cloth, the number on the cap will be that of the brigade and the plume will be red and white upright hackle, twelve inches long, the white tip half the length.

The masters and deputy masters to wear worsted epauletts; those of the former to be of the pattern of captains, and the latter of subalterns. Scarlet worsted sashes; aiguillettes on the loft shoulder of yellow worsted with gilt tags.

The brigadier generals may make such additions in ornaments as they may judge proper.

16. The uniform now established and worn by regimental and company officers, may continue to be, but when other regimental officers are commissioned, and other companies organized, or new uniforms are to be obtained for a whole existing company, they must be in conformity to this order.

By order of the commander in Chief,

H. A. S. DEARBORN, *Adjutant General.*

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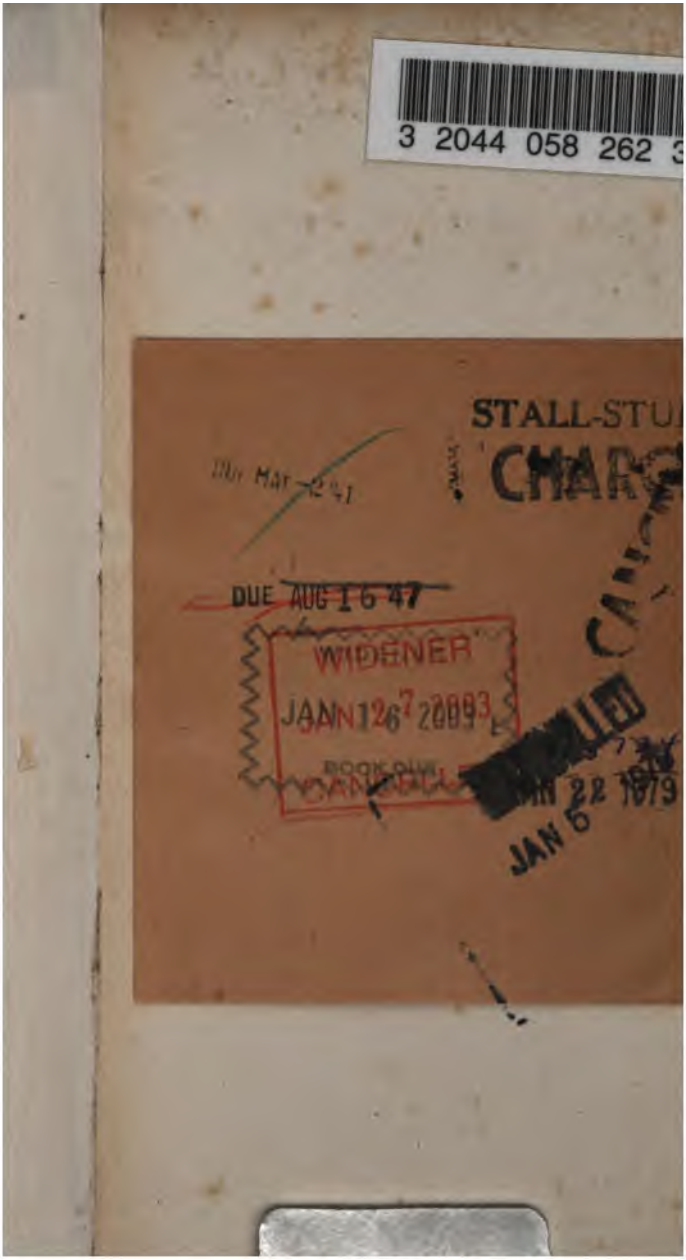
ERRATA.

In section 14, line 3, on page 101, for "quarter masters, sergeants," read "sergeant quarter masters."

In line 9, after the word "*cap*," said section, strike out "for non-commissioned officers, musicians and privates."

In line 18, of said section, for "and musicians," read "musicians and privates."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